

Legislative Brief

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 was introduced in the Lok Sabha by the Minister of Housing and Urban Poverty Alleviation on September 6, 2012.

The Standing Committee on Urban Development (Chairperson: Mr. Sharad Yadav) submitted its report on March 13, 2013.

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Highlights of the Bill

- ◆ The Bill aims to protect the livelihood rights of street vendors as well as regulate street vending through demarcation of vending zones, conditions for and restrictions on street vending.
- ◆ Any person intending to undertake street vending needs to register with the Town Vending Committee (TVC). He may then apply for a vending certificate that will be issued based on various criteria.
- ◆ The state government shall frame a scheme for street vendors. The local authority shall, in consultation with the planning authority, frame a street vending plan once every five years.
- ◆ The TVC comprises of the municipal commissioner, representatives of street vendors, local authority, planning authority, local police, resident welfare association and other traders associations.
- ◆ This Bill shall not apply to Railways land, premises and trains.

Key Issues and Analysis

- ◆ Currently, street vending is regulated under municipal laws enacted by state legislatures. Parliament's competence to legislate on this issue depends on whether the Bill is interpreted as substantively addressing rights and obligations of street vendors (Concurrent List) or relating to municipal zoning (State List).
- ◆ The Bill does not specify principles to be followed by governments in issuing vending certificates, allocating vending zones and the number of vendors per zone. Absence of such norms could defeat the purpose of enacting a law to ensure uniformity in the legal framework.
- ◆ The Bill does not require the stakeholders to be consulted in the formulation of the street vending plan. This could lead to a lack of safeguards in ensuring that the plan is determined in a fair manner.
- ◆ The central law will have an overriding effect on state laws that are inconsistent with the Bill. Current state laws differ with the Bill in terms of powers of the TVC, and mechanism for dispute resolution.
- ◆ The Standing Committee suggests making the Bill applicable to the Railways, incorporating specific provisions of the scheme in the Bill, and consultation with the TVC on the vending plan.

PART A: HIGHLIGHTS OF THE BILL¹

Context

Street vendors are persons who offer goods or services for sale to the public from a temporary static structure or mobile stall. Typically, street vendors fall under the purview of two authorities – the traffic police who deal with flow and regulation of traffic and the Municipal Corporation which regulates the use of pavements and trade conducted on them. In 1989, the Supreme Court held that street vendors have a fundamental right to carry on their trade or business subject to regulation and reasonable restrictions.²

In 2004, the central government formulated the National Policy on Urban Street Vendors to recognise the constitutional right of street vendors to practice any profession (street vending) without causing overcrowded public spaces.³ In 2009, the Policy was revised and accompanied by a model law on street vending which could be adopted by state governments, with modifications suited to their geographical and local conditions.⁴

In October 2010, the Supreme Court directed the government (central/state) to enact a law by June 2011 to recognise the livelihood rights of street vendors and regulate vending activities.⁵ In 2011, the National Advisory Council (NAC) recommended enacting a central law.⁶ Several states including Chhattisgarh, Rajasthan, Madhya Pradesh, Andhra Pradesh and Orissa have enacted laws and policies on street vending.⁷ On September 6, 2012, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 was introduced in the Lok Sabha to create a uniform law for regulating street vending across states and union territories. The Standing Committee on Urban Development submitted its report on the Bill on March 13, 2013.

Key Features

The Bill aims to protect the livelihood rights of street vendors as well as regulate street vending in urban areas across the country. It does not apply to land, premises and trains owned or controlled by the Railways under the Railways Act, 1989.

Registration and issue of vending certificate to Street Vendors

- Any person (above the age of 14 years) intending to undertake any street vending activity may register with the Town Vending Committee (TVC) which may be constituted in each local authority.
- Any registered person may apply to the TVC for a vending certificate. The criteria on the basis of which vending certificates will be issued shall be specified in the street vending scheme developed by the state government. The criteria may include preference for Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), minorities, women and disabled persons. The TVC may charge a vending fee.
- Only those persons with a vending certificate are permitted to work as street vendors. Every street vendor has the right to undertake vending activities in the vending zone specified in the certificate. A street vendor shall not be prevented from exercising this right by any person, police or any authority under any other law.
- The certificate can be issued to a stationary, mobile or any other vendor and will specify the vending zone, time period for carrying on the vending activities, and other conditions and restrictions on street vending.
- Individuals who have been issued a vending certificate before the commencement of this Act, will continue to be street vendors for the period specified in the certificate.

Role of the state government and the local authority

- Every local authority shall in consultation with the planning authority prepare a street vending plan once in every five years. The plan shall determine spatial vending zones as restriction-free, restricted and no-vending zones as well as other changes required for accommodating existing and future street vendors.
- Some of the parameters to be considered in the plan are: the area available for street vending is reasonable, does not lead to overcrowding, and is consistent with existing natural markets (i.e. a market where buyers and sellers have traditionally congregated for sale and purchase of specific goods for more than a specified period of time).
- The state government shall frame a street vending scheme specifying: (a) criteria and process for registration and issue of vending certificate; (b) eviction and relocation of street vendors and manner of confiscation of goods; (c) process for and disposal of appeals; (d) principles for determining vending zones.

Town Vending Committee

- One or more TVCs may be constituted in each local authority, zone or ward. The TVC will specify the time limit for issue and renewal of registration and vending certificate. It will also keep records of street vendors including the stall allotted for vending, category of vending and the business carried out.
- The TVC shall comprise of (a) the municipal commissioner; (b) representatives of street vendors (at least 40 per cent of the TVC, of which one-third are women); and (c) representatives of the local authority, planning authority, local police, traffic police, resident welfare associations, banks, and other traders associations. The Bill also requires the representation of SCs, STs, OBCs, minorities and disabled persons in the TVC.

Eviction and Relocation of Street Vendors and Penalty

- The local authority may evict the street vendor, if he consistently fails to comply with the provisions of the Bill. The goods of the vendors may also be confiscated in the manner specified in the street vending scheme.
- The local authority can relocate the street vendors for: (a) creating public nuisance; (b) obstructing public movement; or (c) any other public purpose. The street vendor shall be entitled to a new vending site.
- The local authority shall give seven days notice to the street vendor before relocating or evicting him.
- A maximum penalty of Rs 2000 may be imposed on a street vendor if he: (a) vends without a vending certificate, beyond the designated zone or specified timings; or (b) violates the terms of the vending certificate or any other provisions of the Bill. The penalty will be decided by the local authority.

Grievance Redressal Mechanism

- Street vendors who have a grievance can appeal to a dispute redressal committee constituted by the local authority. The committee shall consist of one sub judge/judicial magistrate or an executive magistrate and other persons experienced in street vending and natural markets. The committee has to redress the grievance within the time period specified in the scheme.
- An appeal against the decision of the committee shall lie with the local authority.
- The TVC may cancel or suspend a street vendor's vending certificate for breach of provisions of the Bill, vending certificate or scheme. An appeal against the decision of the TVC shall lie with the local authority.

PART B: KEY ISSUES AND ANALYSIS

Jurisdiction of Parliament to frame a central law on street vending

Currently, some states such as Chhattisgarh, Madhya Pradesh and Rajasthan have passed laws empowering urban local authorities or municipalities to regulate street vending.⁷ State governments derive power to legislate on the issue from Item 5 of the State List that covers local government and municipal corporations. The question is whether Parliament has the jurisdiction to frame such a law. In 2006, in response to a question during Question Hour in the Lok Sabha, the government had stated "street vending is a state subject. Central government does not have the mandate to enact legislation on street vending".⁸ A similar position was reiterated in 2009 during Question Hour in the Lok Sabha where the government stated that street vending being a state subject, the central government had drafted a Model Bill to help states formulate their laws.⁹ The NAC when recommending a central law acknowledged that "since the subject matter relates to municipal laws and other entries pertaining to the State List of the Constitution, the law on street vending should be enacted by states. The Centre's responsibility is confined to recommending a Model Bill".⁶ However, the NAC justified a central law by considering street vending as an issue of livelihood and employment and not just municipal regulation.⁶

The Standing Committee report on the Bill states that in the opinion of the Ministry of Law and the Attorney General, a central law could be framed if the pith and substance of this Bill covers entries 20, 23 and 24 of the Concurrent List, i.e., economic and social planning; social security, social insurance, employment; and, welfare of labour including conditions of work.¹⁰ The question is whether the substance of this Bill is that of the rights and obligations (and regulation) of street vendors, or whether it is a municipal zoning issue. In the former case, it will fall under the Concurrent List, in the latter case it will be in the State List.

Balancing objectives of the Bill: livelihood rights vs urban planning needs

In regulating urban street vending activities, the Bill aims to balance three key objectives: securing the right to livelihood of street vendors, ensuring congestion free public spaces and streets, and convenience of vending services for customers. The Bill provides a broad framework for registration of street vendors, grounds for relocation, eviction and confiscation of goods, functions of the local authority and Town Vending Committee, and a grievance redressal mechanism.

Clause 40
and Third
Schedule

The Statement of Objects and Reasons of the Bill says the law is proposed for “ensuring uniformity in the legal framework across states and union territories”. However, the Bill leaves several aspects of the regulation of street vending to the street vending scheme that is to be formulated by state governments and implemented by local authorities. The Bill does not specify the principles to be considered by local authorities in issuing vending certificates, allocating vending zones and determining the number of vendors per zone, or the public purpose for which vendors may be relocated. Absence of such norms to address competing objectives of the Bill could defeat the purpose of enacting a law to ensure uniformity in the legal framework.

Lack of consultation with stakeholders and conflict with state laws

The Bill requires the street vending plan to be framed by the local authority in consultation with the planning authority. The street vending plan determines: (a) zones where street vending can be undertaken, (b) the zones are consistent with existing natural markets, and (c) other changes needed to accommodate existing and future street vendors in vending areas. The Bill does not require the TVC to be consulted when framing this plan. This could present two issues.

Lack of consultation with stakeholders in formulating the street vending plan

Clause 21,
27(2), 3(1)
and 6(1)

In addition to representatives of the local and planning authority, the TVC includes representatives from various stakeholders including the traffic police, local police, street vendors associations, traders and market associations. The local authority and the planning authority may not have such stakeholder representation. With the TVC not being consulted while framing the street vending plan, it is not clear whether there are adequate safeguards in ensuring that the plan is effective and that vending zones are decided in a fair and transparent manner. The National Policy on Urban Street Vendors, 2009 and the Model Bill 2009 required that vending zones be identified in consultation with the TVC. The Standing Committee has recommended that the Bill be amended to include that the local authority will consult the TVC in formulating the street vending plan, determining vending zones, and deciding eviction and relocation of street vendors.

Conflict with state laws

Clause 35
proviso

The Bill states that the central law will override any other state law in case there is conflict between the two laws. Under the Bill, the TVC has a limited role involving the issue and renewal of registration and vending certificates and keeping records of street vendors such as the stall allotted for vending, category of vending and the business carried out. However, in some states such as Chhattisgarh and Rajasthan the laws on street vending (and the Odisha street vendors policy) give the TVC the power to identify and designate vending zones and determine the vending capacity of each zone.¹¹

Clause 20

The current Bill also differs with state laws on the mechanism for dispute resolution. Under the Bill the local authority will constitute a dispute redressal committee that will consist of a sub judge/judicial magistrate or an executive magistrate and other persons experienced in street vending and natural markets. However in states such as Rajasthan and Odisha the TVC is empowered to resolve disputes between street vendors. Under the Bill, if the state law differs from the central law, the central law will prevail. This implies that the powers of the TVC as specified in the Bill will replace the powers of the TVC envisioned in state laws.

A comparison of the provisions of various state laws on street vending with the Model Bill 2009 and the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 is given in the Appendix.

Key Recommendations of the Standing Committee

The Standing Committee examining the Bill submitted its report on March 13, 2013.¹⁰ The key recommendations are:

- The Bill should be made applicable to railways.
- The time limit for the issue of the vending certificate should be one month and it should be renewed every three years.

- Decisions on eviction and relocation of street vendors should be taken by the local authority only after consulting with the TVC. The notice period for eviction and relocation should be increased to 30 days and relocation should be done in a manner that allows street vendors to carry on their old business.
- The tenure of all TVC members should be fixed at five years. Specific provisions on regulation of street vending that are proposed in the street vending scheme should be incorporated in the Bill.
- The permanent committee set up on under the Bill for redressal of grievances should include only judicial officers and no executive magistrate. The Bill should specify a time frame within which the committee will give decisions on disputes.
- Under the Bill a maximum penalty of Rs 2000 can be imposed on a street vendor for violating provisions of the Bill. The Committee recommended that for the first violation a reasonable fine should be imposed and thereafter a penalty of Rs 2000.
- Within six months of the passing of the Act, state governments and local authorities should implement provisions of the Bill.

Notes

1. This Brief has been written on the basis of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 that was introduced in the Lok Sabha on September 6, 2012.
2. *Sodan Singh vs. New Delhi Municipal Council*, (1989) 4 SCC 155.
3. National Policy on Urban Street Vendors, 2004, Ministry of Housing and Urban Poverty Alleviation.
4. National Policy on Urban Street Vendors, 2009; The Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009.
5. *Gainda Ram vs. M.C.D.*, (2010) 10 SCC 715.
6. Note for Recommendations on a Central Law for Protection of Livelihood Rights and Social Security of Street Vendors, National Advisory Council, June 8, 2011, <http://nac.nic.in/pdf/livelihood.pdf>.
7. Chhattisgarh Urban Street Vendors and Hawkers (Registration and Regulation) Bye-Laws, 2010; Rajasthan Urban Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2011; Protection of Livelihood of Street Vendors in Madhya Pradesh and Sale Regulation Act-2011; Draft Andhra Pradesh Street Vendors' (Protection of Livelihood and Regulation of Street Vending) Bill 2011; Odisha Urban Street Vendors Policy 2012.
8. Lok Sabha, Unstarred Question no. 2498, Ministry of Housing and Urban Poverty Alleviation, December 12, 2006.
9. Lok Sabha, Unstarred Question no 226, Ministry of Housing and Urban Poverty Alleviation, September 3, 2009.
10. "Twenty Third Report: The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012", Standing Committee on Urban Development, March 13, 2013.
11. Section 5 of the Chhattisgarh Urban Street Vendors and Hawkers (Registration and Regulation) Bye-Laws, 2010; Section 9 of the Rajasthan Urban Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2011; Section 7 of the Odisha Urban Street Vendors Policy 2012.

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Appendix: Differences between the Model Bill 2009, Street Vendors Bill 2012 and some state Acts

Issue	Model Bill 2009	Central Bill 2012	Chhattisgarh Bye Laws 2010	Rajasthan Act 2011	Andhra Draft Bill 2011	Odisha Policy 2012
Registration of street vendors	Registered street vendor who is allotted a stall will be granted a license. License can be renewed.	Registered street vendor has to obtain a vending certificate; renewal to be detailed in the street vending scheme.	Preference to existing vendors; provision for on-the-spot registration of street vendors; for surplus vending spaces, applications are invited and provisional vending rights allotted.	Preference in allotment to registered street vendors; street vendor who is allotted a stall will be granted a renewable licence.	Preliminary survey to be conducted to identify street vendors and register them; vendors not identified in the survey to be verified on type of vending and vending stall.	Survey to identify street vendors; preference for those with vending stalls and no livelihood; first time vendors can apply for registration if they have no other livelihood.
Norms for assigning vending rights	No provision.	No provision.	Competition/economic viability; preference to long time vendors; one person per vending right; needs and requirements of citizens; share for women and special categories; no public auction of vending rights.	No provision.	No provision.	Registration process to be simple and expeditious; no numerical restriction/ residential requirement for registration; provision for on-the-spot temporary registration.
TVC Members	Municipal commissioner, representatives of street vendors, local authority, planning authority, local and traffic police, resident welfare associations, banks, trader associations.	Municipal commissioner, representatives of street vendors local authority, planning authority, local and traffic police, resident welfare associations, banks, trader associations.	Commissioner, superintendent, representatives of police, corporation, social workers, town planner, vendors union.	Chief Municipal Officer, representatives from municipality, planning authority, traffic police, street vendors' associations, resident welfare associations, banks.	Commissioner, representatives from the municipality, planning authority, traffic police, street vendors, resident welfare associations, nationalised banks.	Commissioner, representatives of corporation, street vendors, resident welfare association, town planners, architects, lawyers, doctors, banks.
TVC Functions	Grant/cancel/renew registration, identify and designate vending zones and timings, determine capacity of each zone, regulate activities of street vendors and dispute resolution.	Grant/cancel/renew registration and vending certificate and specify time limit, maintain records of street vendors-stall allotted, category of vending and business carried out.	Approval and categorising of vending zones, determining vending capacity of zones, fixing royalty rates for vending rights and fee, designating natural markets, defining offences and their fine/penalty, restricting vending activities in public interest.	Grant/cancel/renew registration certificates, identify and designate vending zones and timings, determine capacity of each zone, regulate activities of street vendors and resolve their disputes.	Registration of street vendors, collecting fees from vendors, demarcation of vending zones, determine capacity of each zone, resolve disputes between street vendors, determine penalty.	Demarcation of vending zones, registration of vendors, monitoring vending activities, determine capacity of each zone, resolve disputes, determine penalty mechanism for eviction.
Penalties	Penalty between Rs 200-Rs 500.	Maximum penalty of Rs 2000.	To be determined by TVC.	Fine between Rs 200-500.	Different fines per vending zones/density of business.	To be determined by TVC.
Eviction and Relocation	No provision.	7 day notice followed by daily fine upto Rs 500 followed by confiscation.	Notice, followed by physical eviction and confiscation. Fine and penalty thereafter.	State government to specify in the scheme.	Notice, then fine, followed by physical eviction. Confiscation as last resort.	Notice, then fine, followed by physical eviction. Confiscation as last resort.
Dispute Resolution	TVC.	Committee of sub-judge/executive magistrate and experts on street vending.	Ward Vending Committee.	TVC.	TVC.	TVC.

Sources: The Model Street Vendors Bill, 2009; Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012; Chhattisgarh Urban Street Vendors and Hawkers (Registration and Regulation) Bye-Laws, 2010; Rajasthan Urban Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2011; Draft Andhra Pradesh Street Vendors' (Protection of Livelihood and Regulation of Street Vending) Bill, 2011; Odisha Urban Street Vendors Policy, 2012; PRS.