



Law, Rights and Regulation for Street Vending in Globalising Ahmedabad

Working Paper 1:
Law, Rights and Regulation in the Informal Economy
ESRC-DFID Research Project

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Executive Summary

This working paper forms part of the research project, *Making Space for the Poor: Law, Rights, Regulation and Street-Trade in the 21st Century*, awarded to Cardiff University funded by UK-Aid. The paper reports the findings of a legislative review undertaken to identify the main Federal and State laws and regulations affecting street vendors in Ahmedabad, and the conflicts that vendors face.

We are grateful for the extensive help given by SEWA (Self Employed Women's Association) during the preparation of the report. Their research has identified 179 'natural markets' in Ahmedabad, considered to be places where a confluence of pedestrian and vehicle movement provides an excellent location to trade.

National Constitution

Part III of the Constitution of India establishes Fundamental Rights establish non-negotiable, basic principles for the functioning of the Indian State. Part IV includes Directive Principles which promote the welfare of people through social, economic and political justice.

The Fundamental Rights were used in a much-cited case brought by pavement dwellers in Mumbai in 1985 to contest their proposed eviction. The judgement concluded that the Fundamental 'right to life' in Art. 21 of Part III of the Constitution included a 'right to a livelihood', but this was outweighed by other powers, and so the evictions were allowed to proceed (*Olga Tellis & Ors vs. Bombay Municipal Corporation & Ors*, 1985).

State Legislation

The main legislation governing street vending in Ahmedabad includes

- Bombay Provincial Municipal Corporation Act, 1949 (BPMC Act 1949)
- Indian Penal Code, 1860
- Bombay Police Act, 1951
- Motor Vehicle Act, 1988,
- Criminal Procedure Code, 1973 and
- Gujarat Town Planning and Urban Development Act, 1978 (GTUPD Act 1978)

These form the municipal and police laws that impose restrictions on street vending. In most cases the legislation does not directly prohibit street vending, but imposes restrictions on the use of public urban space for street vending, which make its operation principally illegal.

There are thus numerous routes through which street vendors can be evicted, and key sections of the legislation which are frequently used in prosecutions and eviction include:

- s.238 of the Indian Penal Code, which seeks to prevent obstruction of a public way;
- s.231 of the BMC Act 1949, which allows removal permanent or temporary structures in streets, and goods being hawked or sold in public places, and
- s.384 of the BMC Act 1949 which requires anyone vending or hawking to obtain a license from the relevant authority.

s.102 of the Bombay Police Act, 1951 and s.201 of the Motor Vehicle Act, 1988 also prohibit obstructions in streets that affect the free flow of traffic, and s.151 of the Criminal Procedure Code allows the police to arrest anyone about to commit any cognizable offence without orders from Magistrate.

Town planning in Gujarat is determined GTUPD Act 1978. This allows of public amenities in both master plans and Town Planning Schemes; provision is usually made for formal markets, but not 'natural markets' which are important for vending, although many are informal.

Local Regulations

There are two main jurisdictions of local regulation that affect street vendors in Ahmedabad: licensing, and implementation of the National Policy on Urban Street Vendors (NPUSV).

Under the BPMC Act 1949, responsibility for licensing has been given to the Estate Department of Ahmedabad Municipal Corporation. However the eligibility criteria are too complex for most vendors to meet, and very few licences have recently been issued.

National policies have to be implemented individually by States. The NPUSV, 2004 (NPUSV) was updated in 2009, but with significant omissions, eg: resolution of conflicting legal powers, and protection for 'natural markets', and protection of vendors' in city 'beautification' schemes. The policy was not, until very recently, implemented in Ahmedabad.

Use of PIL

Public Interest Litigation (PIL) was introduced in the 1980s and allows both the courts or any private party to request review of matters of 'public interest'. PIL has become an important mechanism by which communities define their rights, and its use by street vendor representatives provides interesting legal precedents.

From 1974 SEWA started to use the courts to establish rights for street vendors. In 2006, SEWA sought to resolve conflicts between ss.231 and 384 of the BPMC Act 1949, but this was judged *ultra vires*. SEWA then brought a PIL case against Ahmedabad Municipal Council (AMC) to the effect that the NPUSV should be implemented in Ahmedabad.

After four years of protracted court struggle the Ahmedabad Street Vending Scheme has been implemented but, contrary to the spirit of the NPUSV, the interpretation ignores natural markets and is likely to be very restrictive for street vendors.

Recommendations

Amendments are urgently needed to the legislative provisions that make it an offense to sell or hawk goods in a street or obstruct a public way to make an exception for street vendors.

Town planning regulations should be amended to permit dual use of a public way in some locations for movement of traffic and for livelihood activities.

An appeal system should be set up to enable vendors to appeal against decisions of Town Vending Committees.

The National Policy on Urban Street Vendors should make further allowance for the collective control of vending space.

The National Association of Street Vendors of India should establish an Observatory of Laws and Regulations affecting street vendors in different states in India, and a platform to enable vendors to share information about how they are protecting their rights.

SEWA should research the potential of the new UID card to support collective management of space by street vendors.

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1.0 Background

1.1 The Research

This working paper forms part of the research project, *Making Space for the Poor: Law, Rights, Regulation and Street-Trade in the 21st Century*, awarded to Cardiff University under the joint programme funded by the UK's Economic & Social Research Council and Department for International Development (UK-Aid) (ESRC/DFID Awards RES-167-25-0591).

The research is based on an international comparative study of different cities, and draws on a rights-based perspective to explore the impact of law, regulation and policy on the informal economy with a focus on street vendors. The research hypothesis is that the urban informal economy operates in a fragmented and plural regulatory environment, with conflicts between formal and informal regulatory systems that exacerbate risks, vulnerabilities and exclusions of the working poor. Understanding and addressing the risks and conflicts is crucial to developing an enabling, pro-poor regulatory environment.

This working paper reports the findings of a review of legislation, legal cases, and key informant interviews undertaken in 2011, to identify the main legislation under which street vending in Ahmedabad operates, and the extent to which conflict within the law affects street vendors. Working Paper 2 entitled *Claiming Urban Space: Street Vending in Ahmedabad* explores the characteristics of street vending in the city (Brown *et al* 2012).

We are extremely grateful to the Legal Team of the Self-Employed Women's Association (SEWA) for discussing at length the legal issues faced by street vendors, providing details of the Public Interest Litigation¹ (PIL) case filed in 2006, and discussions on strengthening rights for street vendors. Particular thanks to Justice R.A. Mehta and advocate Bhushan Oza who provided details of the PIL case filed by SEWA in 2006 requesting implementation of the National Street Vendors' Policy.

1.2 Street Vending - Context

'Street vendors form a very important segment of the unauthorized 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' (MoHUPA 2009: 1).

This quotation in the *National Policy on Urban Street Vendors, 2009* (NPUSV), describes the important role of street vending both in Indian urban economies, and as a source of livelihoods for many poor urban workers. Some argue that street vendors also contribute to urban security as their presence on the streets can reduce crime, and that enabling the livelihoods of the poor protects against violence of the subaltern. However, the current policy paradigm and legislative regime is extremely hostile to street vendors, particularly in Ahmedabad the focus of the research.

¹ Public Interest Litigation: PIL was introduced in the 1980s and allows the courts or other private parties to request review of matters of 'public interest'. PIL has become an important mechanism by which communities define their rights in relation to the state, and its use by street vendors' provides some interesting legal precedents.

India is one of the few countries to have developed a national framework for street vending. The NPUSV, published by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA), was developed in response to the campaign by the National Association of Street Vendors of India (NASVI). NASVI was founded in 2003 and now has a membership of 540 street vendor organisations, and is a platform for around 10 million vendors, of which 3.5 million are members, to articulate their issues and demands at national level².

However, street vending is a state function so the national government can only prepare a 'model law' as guidance for states. SEWA and NASVI, together with the government's National Advisory Council (NAC) on social policy, has been instrumental in promoting the idea of a Model Bill, and a draft *Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009*, has been prepared by MoHUPA³.

Some states have evolved pro-street vendor policies, for example in Bhubaneswar city in Orissa one third of the pavement area is reserved for street vendors and another two thirds for pedestrians. In Delhi, street vendors are included in a Bus Rapid Transit (BRT) pilot corridor, and Delhi government's Unified Traffic & Transportation Infrastructure (Planning & Engineering) Centre under the Delhi Development Authority (DDA) has developed design guidelines to include '*Hawkers Zones*' in pavement design (UTTIPEC, 2009). Nevertheless, in parallel there has been increased hostility towards street vendors, who are considered to obstructing infrastructure 'development' and 'modernisation' of Indian cities.

Ahmedabad was chosen as the location for the research because the Self Employed Women's Association (SEWA) has organised a union of street vendors with about 85,000 members. SEWA Union is a founding member of NASVI, and is also working with street vendors in other cities of India. SEWA has undertaken extensive work supporting street vendors, including pursuing legislative and court cases since 1974, and undertaking research to defined the idea of *natural markets* (places where a confluence of pedestrian and vehicle movement provides an excellent location to trade), a concept further defined in the NPUSV.

1.3 Ahmedabad

Ahmedabad is the seventh largest metropolis of India and the largest of the State of Gujarat, with an estimated population of 6.35 million in 2011 and an urban area of over 450 sq km. Gujarat is the second most industrialised, fourth richest and third most urbanised state of India. Ahmedabad was called the 'Manchester of India' on account of its cotton textile industry. However, the city experienced severe crises from the late 1980s to the late 1990s during which most of the cotton textile mills closed down, and a large section of the labour force was displaced from the formal to the informal sector (Mahadevia, 2002). Since then, the city has experienced casualisation of its workforce, and by 2009-10, 53% of the labour force were self-employed and another 11 per cent worked casually (Mahadevia 2011).

In the last few years the economy has strengthened. Ahmedabad now has a thriving industrial sector specializing in chemicals, textiles, drugs and pharmaceuticals, and car manufacturing.

² <http://wiego.org/wiego/national-association-street-vendors-india-nasvi>, accessed August 2011

³ http://mhupa.gov.in/w_new/StreetVendorsBill.pdf, accessed August 2011

Recent major urban investments including upgrading the Sabarmati Riverfront, the Bus Rapid Transit System (BRTS), and the Gujarat International Finance Tech City (GIFT) a new economic enclave on the city's periphery. The city is well-known for its innovative Slum Networking Project, and has won awards for Economically Weaker Section (EWS) housing programmes under the Basic Services for the Urban Poor (BSUP) component of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

Nevertheless urban poverty remains acute. An estimated 41% of the city's population lived in slums in 1990 (ASAG 1992). A more recent estimate says that 26% are slum-dwellers⁴, and the 2001 population census gives an estimate of 13 per cent (Office of the Registrar General & Census Commissioner, India 2005: 22). A primary survey of the slums by Mahila Housing Trust (MHT) on behalf of the Ahmedabad Municipal Corporation (AMC) in early 2000 states that there are around 710 slums in the city, housing around 0.9 million people⁵.

⁴ The 1998 slum estimate is from the Swarna Jayanti Shehri Rojgar Yojana (SJSRY) survey; the 2001 estimate is from Ahmedabad Municipal Corporation (AMC), Ahmedabad's City Development Plan, <http://jnnurm.nic.in/missioncities.htm>, accessed January 2012

⁵ The number of households in a slum was calculated through a survey conducted by SEWA and SAATH. The total slum population has been calculated considering a family size of 5. As per census figures of 2001, a population of 439,843 resides in slums. This figure only includes slums clusters of more than 60 houses

2.0 Legislation

2.1 Legislative Context

This section reviews the laws, rules and regulations in Ahmedabad pertaining to street trade. Regulations essentially define the framework within which informal businesses are carried out and policies are designed to influence the economic behaviour of informal units. The review begins with the *Constitution of India*, considers state enactments, and then local municipal laws and strategies.

The municipal and police laws that impose restrictions on street vending in most cases do not directly prohibit street vending as a profession, but impose restrictions on the use of public urban space for street vending. The acts are archaic and fail to meet the challenges posed by the current situation particularly relating to migration, unemployment, and saturation of the formal sector.

In Ahmedabad street trade is governed by various laws and acts:

- *Bombay Provincial Municipal Corporation Act, 1949*
- *Indian Penal Code, 1860*
- *Bombay Police Act, 1951*
- *Motor Vehicle Act, 1988,*
- *Criminal Procedure Code, 1973*
- *Gujarat Town Planning and Urban Development Act, 1978*

In all the legislation, vendors are viewed as a problem to be controlled, or as a nuisance or obstruction, rather than as enterprises that contribute to the urban economy. Since vendors typically lack legal status and recognition, they frequently experience harassment and evictions by local authorities or competing shopkeepers. Although the sector provides employment, it tends to be perceived as antisocial, anti-developmental, dirty, unaesthetic, and unhygienic, and some businesses such as food stalls face additional checks by the Food and Drug Administration. This negative attitude and neglect has meant that this sector is ignored in town planning regulations and treated as unplanned urban growth. The reality however is that the sector comprises self employed people who are trying to earn their living with dignity and honesty and are an integral part of the city's economy who ask only '*do tokri ki jagah*' (space for two baskets, ie: a life of dignity).

2.2 Constitution

The *Constitution of India*, is a social document and the majority of its provisions are aimed at promoting equality, justice, fraternity and liberty by establishing favourable conditions required for its achievement. Comments relate to the latest amendments, dated March 2011. The Constitution has two important sections:

- Part III, Fundamental Rights
- Part IV, Directive Principles of State Policy.

The Fundamental Rights are the non-negotiable, basic principles of the functioning of the Indian State. All other laws have to abide by the articles of the Fundamental Rights. The Directive Principles are positive obligations on the State for the promotion of '*welfare of the people by*

securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all institutions of the national life'. But, as stated in Article 37 the Directive Principles are not enforceable by a Court of Law and in the conflict between the Directive Principles and Fundamental Rights, the latter prevail.

The important Fundamental Rights which have been used for litigation in matters related to the rights of the street vendors are listed here:

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

Article 32: Remedies for enforcement of rights conferred by this Part

Article 226: Power of High Courts to issue certain writs

Article 21 states that, '*No person shall be deprived of his life or personal liberty except according to procedure established by law*', and has been important in establishing rights for street vendors, in the court case summarised in **Appendix 1** (see also below).

The Directive Principles of State Policy are important in policy development and also influence judgements of the High Courts (state level) and Supreme Courts (national level). The important provisions for this study are:

Article 37: Application of the principles contained in this Part

Article 38: State to secure a social order for the promotion of welfare of the people

Article 39: Certain principles of policy to be followed by the State

Article 41: Right to work, to education and to public assistance in certain cases

The Directive Principles provide guidance for policy making, but if any municipal or other laws or policy does not meet the essence of the Directive Principles, there is no judicial redressal. For street vending an ambiguity within the *Constitution* lies in the fact that Article 19(1) (g) relating to freedom to practice professions and trades, does not clarify whether the occupation of hawkers and vendors falls within its scope. Furthermore, while interpreting the term 'public interest' in Article 19, it is difficult to argue that the activities of the hawkers are in the public interest. On the contrary, several acts, eg: the Police Act and the Town Planning Act consider trading on the road as an obstruction or nuisance that needs to be removed in the 'public interest'. The most lenient interpretation grants street vendors right to trade and livelihood but not to be exercised on the roads in a way that obstructs other 'public interests'.

A classic case in the Supreme Court of India, which represents this dichotomy is that of *Olga Tellis and Others vs. Bombay Municipal Corporation, 1985*, when a group of pavement and slum dwellers in Bombay (Mumbai) and their supporters sought to oppose eviction (**Appendix 1**). The judge determined that the 'right to life' under Article 21 on *Protection of Life and Personal Liberty* should be expanded to include a 'right to shelter and livelihood'. However, the judge determined that the right to life and livelihood can be deprived by other procedures defined in law. Citing the *Bombay Municipal Corporation Act, 1888*, ss.312(1), 312(2) and 314, he determined that no-one has the right to use public property for a private purpose and the pavement dwellers were therefore trespassers. The Municipal Corporation's plea for removal of

the pavement dwellers was therefore upheld (see also Section 4.1.3). Thus, as illustrated, the Fundamental Rights have a restrictive or conditional interpretation

The case has been used as a precedent in other judgements eg: *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab and Others*, 1996, when an appeal was allowed to remove pavement dwellers on the grounds that sufficient alternative accommodation could be provided, even though they argued they would lose their livelihoods in the move.

Article 32 on *Remedies for the enforcement of rights conferred by this Part*, guarantees a right to appeal to the Supreme Court for enforcement of rights in this part of the Constitution. This provision has been the basis Public Interest Litigation (PIL) and Writ Petitions in the Supreme Court in matters of public interest or non-implementation of legislation.

Having given the citizens access to the High Courts and the Supreme Court in matters against the State, there was an issue as to who could approach the higher courts. In the 1980s, several judgements expanded the definition of those who could file cases to include both those directly affected and those representing the larger public interest. Article 32 and Article 226 have been widely used to file PILs and writs in the High Courts and the Supreme Court, in the case of violation of Fundamental Rights by the State or non-implementation of legislation, raise public awareness and public policy debates, and in some instances to force the government to enact new legislation. Use of constitutional provisions to attain justice for the urban poor through the route of PILs and writs is something very special to India, and these have become *de facto* instruments in setting public policies.

There is mixed opinion as to whether the PIL process has benefitted the urban poor. In fact, Ghertner (2008), Bhan (2011), Dupont and Ramanathan (2008), Ramanathan (2006), and the Olga Tellis Case (**Appendix 1**) indicate that PILs have sometimes gone against the urban poor due to emerging middle class activism (Srivastava 2009, Kundu 2009). The PIL discussed at length in this report, which pertains to the case filed by SEWA on behalf of street vendors in Ahmedabad, has not achieved its original purpose, because a favourable High Court order has been subverted in its implementation.

2.3 State Legislation

2.3.1 The Bombay Provincial Municipal Corporation Act, 1949

Ahmedabad Municipal Corporation regulates trades in Ahmedabad under the provisions of *Bombay Provincial Municipal Corporation Act, 1949* (BPMC Act). The act lists municipal authorities such as the Municipal Corporation, the standing committee, and a Municipal Commissioner who are responsible for carrying out the provisions of the act. It also describes the duties, powers and responsibilities of the municipal authorities, granting Municipal Corporations the responsibility for maintenance, operation and development of certain public utilities in the city. Municipal Corporations have two types of functions: (i) obligatory and (ii) discretionary.

The relevant sections of the BPMC Act are set out below.

s.209. Power to acquire premises for improvement of public streets

s.209 of the BPMC Act empowers municipal authorities to acquire premises for the purpose of street improvement such as widening, expanding, building a new street.

s.226. Prohibition of projections upon streets

s.229. Prohibition of structure or fixtures which cause obstruction in streets

ss. 226 and 229 of the Act prohibit the erection of any structure or stall on the streets which will obstruct passage of the public, or impede the working of a drain or open channel. Such a structure may be removed by the municipal commissioner and the person responsible for the creation of the structure must incur the expense of removal.

s.231. Commissioner may, without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of Act

s.234. Commissioner may permit booths, etc. to be erected on streets on festivals.

s.231 allows removal of permanent or temporary structures in streets, and goods being hawked or sold in public places, and s.234 allows for the erection of street stalls during festivals.

s.328. Provision of new municipal markets and slaughter-houses

s. 330. Prohibition of sale of commodities sold in municipal markets.

Under s.328 the Commissioner is responsible for the provision and maintenance of municipal markets; under s.330 the Commissioner may prohibit sale of similar goods within a distance of fifty yards from a municipal market.

s.331 Opening of private markets and of private slaughter-houses

s.378. Private markets not to be kept open without license

s.377. Prohibition of sale in municipal markets without license of Commissioner

s.379. Prohibition of sale in unauthorized private markets

ss.331, 377 and 378 set out powers for the approval and licensing of private markets, and restrictions on sale from unlicensed markets. Under s.377 the Commissioner should ensure that all traders in municipal markets are licensed.

s.384. Licenses for sale in public places

s.384 establishes the need to obtain a license from the municipal commissioner for carrying out hawking of wares in any public place and confiscation of goods without prior notice in case of failure of the compliance. The provision is supplemented by the *Bombay Shops and Establishments Act, 1948*, which may prescribe the timings of any trade. Any person contravening the provisions shall be liable to have his goods seized.

s.431. Complaint concerning nuisances

Under the ss.431 and 466 of the Act, any person living in the city can register complaints about a nuisance in the city, and the Commissioner has the powers to prevent such nuisance. It is often noticed that the elite and affluent class of the city often considers the hawkers and vendors as anti-social elements and an annoyance not only by the municipal agencies but also by the residents' associations.

s. 466. Making of standing orders by Commissioner

s.466 covers the operations of a market to prevent a nuisance, fix trading times, prevent closure, of shops and stalls, maintain cleanliness, require provision of ventilation and water, and ensure circulation space.

Discussion of the BPMC Act

Some fourteen sections of the BPMC Act regulate vending and hawking in the city of Ahmedabad. The provisions are supplemented by the *Bombay Shops and Establishments Act, 1948*, which also regulates vending and hawking. Vendors and hawkers can be penalised and/or harassed at any time through the application of sections of the Act. The municipal laws do not directly prohibit vending and hawking as a profession but imposes a gamut of restrictions on it. The municipal law basically regulates the use of pavements.

It is often city elites who see hawkers and vendors as an anti-social elements crowding pavements, spilling onto busy streets, and creating transport bottlenecks, and blame them for being the source of dirt, disease and crime. They are viewed as an annoyance not by both municipal agencies and also by residents' associations which are largely of the middle classes.

2.3.2 Indian Penal Code, 1860, Bombay Police Act, 1951, and Motor Vehicle Act, 1988

Three legal instruments regulate streets and maintain public order: Indian Penal Code, 1860, *Bombay Police Act, 1951*, and the *Motor Vehicle Act, 1988*.

The Indian Penal Code, 1860

s.283. Danger or obstruction in public way or line of navigation

s.283 of the code allows a fine for anyone who causes danger, obstruction or injury in a public way.

Bombay Police Act, 1951

Hawkers are evicted mainly under s.67 and s.102 of the *Bombay Police Act, 1951*, which stipulate that anyone preventing smooth flow of traffic can be arrested and removed. According to the laws even a senior police officer cannot permit anyone to carry out vending on the streets.

s. 67. Police to regulate traffic, etc., in streets

Under s.67 it is the duty of a Police Officer to regulate and control traffic on the streets, prevent obstruction, keep order in the street and other public places, and to regulate access to such places to prevent overcrowding.

s.102. Causing any obstruction in a street

s.102 requires that no person shall cause an obstruction by allowing any vehicle being loaded or unloaded to remain longer than necessary in a place, or by leaving in place any 'box, bale, package or other thing', or by setting out for sale any 'stall, booth, board, casket' etc.

Criminal Procedure Code, 1973

s.151. Arrest to prevent the commission of cognizable offences

s.151, allows a police officer to arrest anyone about to commit any cognizable offence without orders from a Magistrate and without a warrant, however, the person cannot be detained in the police custody for more than 24 hours from the time of his/ her arrest.

Motor Vehicle Act, 1988

s.201 of the Motor Vehicle Act, 1988, also penalizes anyone who obstructs the flow of traffic on the public highway.

s.201. Penalty for causing obstruction to free flow of traffic

s.201 is essentially designed to prohibit parking offences, specifying that whoever keeps a disabled (parked) vehicle in a place where it impedes the free flow of traffic will be liable to penalties. The wording can be applied to both motorised and non-motorised vehicles such as *laris* (hand carts).

Discussion

Any of the legislation above can be used to justify evictions of street vendors. For example, in Ahmedabad, during 17-20 December, 2011, vendors were evicted under the powers of s.283 of the Indian Penal Code from Bhadra Market, a centrally located market and traditional vendors' area in Ahmedabad. Cases were filed against 50 street vendors and their goods were confiscated (source: field visits, news reports). The eviction was ordered by a new Deputy Commissioner of Police. The Criminal Procedure Code can be used to arrest street vendors protesting against eviction without any procedure. Even if they are released after 24 hours, the threat of arrest acts as a deterrent for the vendors to not protest.

To resolve conflicting responsibilities and interests of the Police and the municipal authorities almost seems unattainable, and it is evident that the authorities have not been using the laws in the spirit in which they were formed. There has to be a lawfully accepted resolution so as to protect the business interests of the vendors and create conditions so that they are not constantly harassed and pestered by the law enforcing authorities. It can also be argued that the solution to such conflicts lies not in the law but in planning and urban management, which could address the needs of conflicting interest groups in the city. For example, the laws are not invoked in certain cases, such as encroachment on the roads by religious activities and construction, or parking.

2.3.3 Gujarat Town Planning and Urban Development Act, 1976

In Gujarat, the development of urban areas, and preparation of Development Plans (DP) and Town Planning Schemes (TPS), are determined by the *Gujarat Town Planning and Urban Development Act, 1976* (GTPUD Act). The Town Planning Scheme for local area planning is a tool of land pooling and readjustment, through which, the planning authority takes a proportion of the plot of land from private owners for the provision of infrastructure, commercial sale to raise funds for infrastructure development, and reserving lands for public good such as social facilities and housing for the urban poor.

Chapter II of the GTPUD Act describes *Development Area and Constitution of Area Development Authorities*. s.12 of the Act describes the contents of the draft development plan and the manner in which the area covered under it should be regulated. It specifies reservation of land for public purposes such as schools colleges, medical and health institutes, cultural institutes, community facilities, but does not mention the space requirement for the street vendors.

Chapter IV of the act explains the *Control of Development and Use of Land Included in Development Plans*. Under the s.35 of the act vendors can be penalized if they carry out business in any area without permission, s.36 and s.37 of the Act permit removal of

unauthorized temporary development by the Commissioner of Police and the District Magistrate.

Chapter V of the Act on *Town Planning Schemes* explains their content. s.40 in this chapter provides for the reservation of land within a town planning scheme (TPS) for the purposes of roads, open spaces, gardens, recreational activities etc. Under this section vendor markets should also be considered as an integral part of the society.

s.41 of the Act provides for declaration of the intention to make a TPS by the Chief Town Planner, and publication of such intention. Under s.42 of the Act, within nine months of the dispatch of the proposed plan to the State government a draft TPS for the plan area has to be published in the Official Gazette along with the draft regulations for implementation. Notwithstanding anything in ss.41 and 42, under s.43 the State government can require any authority functioning within the development area to make a draft TPS and submit it to the state government for sanction.

ss.45 and 46 provide for particulars of the draft TPS. s.46 makes provision for land subject to disputed ownership to be including in a draft TPS. s.47 allows any person affected by the TPS to submit his/her objections to the appropriate authority, which is required to consider the objections before submitting the TPS to the government.

In spite of the provisions of the GTPUD Act, the TPSs do not recognise *natural markets* where the vendors carry on their business, and do not make any provisions for the street vendors.

Discussion of the GTPUD Act

While urban plans allocate space for public amenities such as parks, hospitals, community space, etc they do not take into account places that can be developed into *natural markets* for the hawkers, eg: rail or bus terminuses etc. (Bhowmik, 2001). Although in theory the TPS mechanism creates a tool that would allow reservation of lands for vendors' markets, there is no specific provision in the GTPUD Act to recognise *natural markets*, and in practice no provision is made for street vendors in TPSs. In master plans the term 'public space' has a very restrictive meaning. A major problem is that master plans do not allocate space to vendors: *weekly markets* struggle to survive and *natural markets* are all together ignored.

Overall it is clear that the planning framework adopted for the preparation of development plans assumes that all urban activities take place within the formal system of registered land, and there is no acknowledgement that the majority of the urban land system is informal. There are provisions for community involvement, but the GTPUD Act only recognises land owners as legitimate participants. This excludes tenants and occupants of informal housing from participating in the preparation of the TPS, as well as vendors and hawkers who are not legitimate owners of the spaces where they trade.

The conception of a market in a Development Plan and TPS is very formal. It connotes a formal built market and not the *natural markets* formed by the hawkers. Interestingly, this provision has been implemented in Rajkot City in an innovative scheme, where a plot allocated for commercial use in a prime central location has been allocated a vendors' market after 4.00 pm every day. Rajkot Municipal Corporation has installed lights and toilet facilities. Thus, although the TPS mechanism allows the possibility of allocating spaces for *natural markets*, the tool is not fully utilised indicating a bias towards formal sector activities.

2.4 Municipal Regulations

2.4.1 Licensing procedure in Ahmedabad

Ahmedabad Municipal Corporation (AMC) is responsible for licensing of street vendors under ss.376 and 337 of the BMC Act, 1949. The Estate Department of AMC has the responsibility of issuing licenses to vendors and hawkers.

The license procedure requires an application to be submitted to the Estate Department with the required documents, including a ration card, proof of address, or voter ID cards etc. If the trade is related to food then a further license needs to be issued by the Health Department. According to the BMC Act, the license should specify the period, restrictions, conditions, date of renewal etc. and the licensee must produce the license when the relevant authority requires it. After submitting the application the authority is required to verify the premises and then grant the license (CPPR, 2008). The terms of the license for vegetable vendors are set out in Box 1. Food vendors have to comply with the hygiene standards at all times, and their license is revoked if the department does not find compliance during their quality checks.

Box 1: Terms of Vegetable Vending Licenses

The terms of vegetable vending licenses:

1. *Applicant can sell the articles in the entire zone/area/election ward except those mentioned in the restricted area list*
2. *Applicant has to apply at the city civic centre along with the proof of address (ration card) and identity (election card),*
3. *The area where the trader is intending to do his business has to clearly mentioned in the application*
4. *Hawkers can sell their articles in the allowed area but cannot get still at any particular place for more than 30 minutes.*
5. *All the hawkers of a particular area should stand at a single place in a single row only. Making more than one row is not allowed.*
6. *When the hawkers are standing at that time they have to be near the curb of the road. The vehicle must be placed at least 30 meters away from the bus stops and the road corners and 50 feet away from the corners of the small streets.*
7. *The vehicle should be placed at least 50 meters away from the junction of the main road.*
8. *The licensee is allowed to sell the articles from 7 am to 11 pm.*
9. *The hawkers have to use the 'lari' designed by the AMC in advance which measures 1.5 m long, 1.0 m wide and 1.4m high.*
10. *The licensee should not get indulged in any act that causes any problem to the citizen of the respective area and also he should not disturb the streets and the footpaths by restricting the pathways.*
11. *The licensee cannot hawk in a No Hawking zone.*
12. *If the licensee has to pass from the no hawking zone than he has to cover the goods on the "lorry" so that they cannot be seen by others.*
13. *He/ she should stay away at least by 30 meters from any municipal or private market.*
14. *The licensee will not use any sirens, horns or bells to grab the attention of the passer by.*
15. *Licensee will keep the 'lari' neat and clean*

16. *For the sale of drinks and edibles, the licensee also has to follow the prevention and food adulteration act 1954, and have to take separate license coming under the act. If the licensee or the partners indulged in the selling activity is suffering from any disease, they cannot go for the business unless completely cured.*
17. *The licensee cannot change the license in any condition.*
18. *The licensee has to keep the license with him during the working hours and has to show it to the authorized person whenever asked for.*
19. *The license fee is not refundable*
20. *The licensee has to paste the license number and license card on the front of the vehicle.*
21. *The licensee can select any three of the total election ward for hawking. If he/ she wants to hawk at two more places than he/ she has to pay 50 per cent extra fees to the AMC. (Source: CCPR, 2008)*

Licensing Requirements - Discussion

According to the BPMC Act, municipalities have to provide licenses for vending and hawking, but in reality the authorities are reluctant to issue licenses, application forms are complicated, and the criteria for acquiring a license are onerous. The eligibility requirements for a vendors' license include a ration card, proof of address, or voter ID card, and can act as a hurdle to legalisation as many of the vendors and hawkers live in slums without a recognised address. In Mumbai there are 200,000 hawkers but only 14,000 have been granted licenses. Women hawkers in the city are often subject to harassment by the Police and municipal authorities, and few women vendors in the city possess licenses.

2.5 Conclusion

It is evident that the street vendors have to operate within a harsh regulatory framework in which the protection of their rights is weak and the law brands vendors and hawkers as a civic nuisance and encourages authorities to evict them. Vendors have to deal with multiple authorities – the Municipal Corporation, Police, Regional Development Authorities etc and this leads to exploitation and extortion.

ss.231 and 384 of the BPMC Act 1949 are the sections most frequently used to evict and prosecute street vendors, and the acts need to be amended in order to remove the anomaly between a legal vendor and illegal obstruction. Similarly the Union Government should amend s.283 of the *Indian Penal Code 1860* to make an exception, so that vendors and hawkers are not prosecuted for occupying a public way. Regularisation would imply that hawkers would not be forced to bribe the authorities in order to trade, and municipal authorities would also increase their revenues through the fees collected from hawkers. There is considerable potential for improved design of roads and pavements such that the street vendors can continue their trade without inconveniencing other road users (Bhowmik, 2001).

In relation to urban planning, changes to the regulations are required so that master plans and local area plans cater to the needs of space for street vending. Suitable spatial planning 'norms' for reservation of space for street vendors in accordance with their current population and projected growth need to be devised. State governments have been advised to '*remove the restrictive provisions in the Municipal Acts to make street vendors inclusive in the city plan / cityscape*' (Bhowmik, 2003a, 2003b).

3.0 National Policy on Urban Street Vendors of India, 2004 & 2009

3.1 NPUSV Policy, 2004

The *National Policy on Urban Street Vendors of India* (NPUSV) was first drafted in 2004, with changes in 2006 and in 2009⁶. The policy aims to reflect the spirit of the *Constitution* on the rights of citizens to equal protection before the law. The central point of the policy is that it recognises street vending as an integral and legitimate part of the urban retail trade and distribution system (Bandyopadhyay, 2011). The 2009 policy also recognises the existence of *natural markets*, and has made recommendations on the planning of *natural markets*.

The centrepiece of the policy is the formation of the City /Town Vending Committees (TVC) and optional ward level committees for large cities to supervise the planning, organizing and regulating of street vending. TVCs include representatives of street vendors with members from RWAs (Resident Welfare Associations), Market Associations, Traders' Associations, police and municipal and planning authorities. These committees are required to allocate and manage space, monitor street vending and address any grievances and complaints. The policy recommended that municipal authorities provide a range of services for street vendors, such as water, electricity, solid waste disposal, public toilets, and storage facilities (Bandyopadhyay, 2011).

The other important aspect of the NPUSV was the recognition that about 2% - 2.5% of the urban population are estimated to be street vendors, and that city planning should accommodate that number of vendors. It also suggested that the area norms provided in the Delhi Master Plan could be taken for planning purposes. The NPUSV recognised that street vendors have a natural propensity to locate in certain places. These places were then articulated as *natural markets*. The Delhi policy also emphasised that “*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.*”

The policy addresses the need for spatial planning norms to be inclusive and calls for demarcation of areas on the following basis:

- Restricted free vending
- Restricted vending
- No vending zones; taking into account the natural propensity of street vendors to locate in certain places at certain times in response to the patterns of demand for their goods and services.

The policy also sets no limits on the number of vendors allowed to trade, but suggests a time-sharing model to allow maximum number of vendors to be accommodated. The requirements of the 2004 policy are outlined in **Box 2**.

⁶ A 2011 version was due for publication as this report was being finalised.

Box 2 Draft National Policy on Urban Street Vendors of India, 2004

Provisions of the draft National Policy on Urban Street Vendors, 2004

- i) Set up Town Vending Committees / Ward vending committees with powers to set up terms and conditions for hawking and to register vendors on payment of a monthly registration fees and monthly maintenance charges.
- ii) To refrain from forcibly evicting street vendors and denial of basic right to livelihood and provide for their relocation and rehabilitation ensuring that-
- iii) Eviction should be avoided unless there is a clear and urgent public need to land in question.
- iv) Where relocation is absolutely necessary, notice of minimum 30 days should be served on the concerned vendors.
- v) Affected vendors/ representatives involvement in planning and implementation of rehabilitation project.
- vi) Affected vendors should be assisted in their efforts to improve their livelihoods standards of living or at least to restore them, in real terms to pre- evicted levels.
- vii) Loss of assets should be avoided and compensated.
- viii) That areas prescribed in the SEWA report on natural markets be declared natural markets and street vendors be allowed to carry on their vocation any restrictions on payment of stipulated registration fees and charges.
- ix) That the declaration of natural markets and space for street vendors in natural and other markets as laid down in the Nation policy for Street vendors, 2004, be provided for in the town Planning Schemes or any similar scheme governing the areas under the jurisdiction of the AMC.
- x) Pending inclusion of provisions for space for street vendors in the TPS or any similar scheme by the AMC, The AMC be restrained from prosecuting or evicting the vendors from the place they carry on their vocation and earn their livelihood.
- xi) Pending constitution of Town Vending Committees in accordance with the National Policy 2004. The responsibility and powers to take any corrective action as regards street vendors be assigned to the market committees of the street vendors or their representatives.
- xii) That JNNURM of Urban development, Government of India, be directed to make provisions for street vendors in the Development Plan for Ahmedabad.

3.2 Draft NPUSV Policy, 2009

The draft *National Policy on Urban Street Vendors, 2009*, works towards promoting a supportive environment for urban street vending while at the same time ensuring that their vending activities do not lead to overcrowding and unsanitary conditions. The 2009 Policy also includes providing access to credit, skills development and capacity building for vendors. However, compared to the draft policy of 2004, the revised document makes several significant omissions.

The 2004 draft proposed amending s.283 of the *Indian Penal Code 1860* and s.34 of the Police Act which penalises anyone who obstructs the public line of navigation. These two provisions create the contradiction between a legal 'licensed' vendor and an 'illegal' obstruction which can result in eviction of even licensed vendors. The draft policy also recommends that central and the state governments amend ss.283 and 431 of the *Indian Penal Code 1860* to include an

exception for street vendors as follows: *'Except in case of street vendors/hawkers and service providers with certain reasonable regulations'*. This is not included in the 2009 draft.

The 2009 draft policy also omits mention of the protection of vendors in city 'beautification' schemes. The 2004 policy states that no hawker/street vendor should be arbitrarily evicted for 'beautification' of city space. The beautification and clean up programmes undertaken by states or towns should actively involve street vendors as a part of the beautification programme. The policy of 2004 stresses that where relocation is absolutely necessary, a minimum of 30 days notice should be given and vendors offered adequate relocation.

The 2009 policy like the 2004 policy, ensures that the TVCs should contain more than 40% of members from the street vendors' associations but does not address the fact large numbers of street vendors in India are not members of associations. However, the 2009 draft omits comment on the amount of space to be allocated for street vending which was mentioned in the 2004 policy.

The 2009 policy, is highly restrictive for vendors. It omits the concept of *natural markets*, and envisages many restrictions on the time and place of vending, such as permitting vending only during non-rush hours and allowing vendors markets to function only once the regular markets close down such as in night bazaars from 7.30 pm to 10.30 pm. The revised policy thus totally missed the point that the vendors' markets develop where there are people and public activities.

It is clear that in the process of amendment of the draft policy, some very important recommendations on legal amendments and the conduct of evictions have been dropped. Thus the policy remains a method to spatially regulate and institutionalize street vending, and hence becomes a strategy to seize urban space from the urban poor. Thus the 2009 draft is much weaker than the earlier 2004 version.

4.0 Court Cases

4.1 Early Court Cases

This section outlines the early court cases pursued by SEWA seeking to protect street vendors' rights to trade.

4.1.1 Manek Chowk 1974

SEWA's protracted legal intervention in the struggle for vendor's rights began in 1974, when it filed a case in the High Court of Gujarat petitioning for trading spaces and licenses for the vendors at Manek Chowk. The Manek Chowk case was argued on the basis of Article 19 (1) (g) of the *Constitution* and concerned both the BMC Act 1949 and the *Bombay Police Act 1951*.

SEWA first argued that under s.384 of the BMC Act, AMC was authorized and hence mandated to issue licenses for public spaces to be used for hawking, but that at the same time vendors are denied licenses and are prosecuted under the s.231 of the Act, which authorizes the removal of any article hawked, disposed or exposed for sale, without notice. Since vending was considered illegal without licenses, AMC was using its power to collect fines, and collected weekly fine of Rs.12.50 per hawker for six years.

The vendors were also fined under the ss.102 and 117 of the *Bombay Police Act 1951*. The vendors paid Rs.1-2 on a daily basis as bribes to the police, and if they refused to pay their names were recorded and they were issued summons for traffic offences under the Act. SEWA sought to declare Manek Chowk as pedestrian zone, which in the order the Supreme Court declined, but the court granted the request to issue licenses for the vendors, who were granted space in Manek Chowk as they had been doing business there for many generations.

The court order required AMC to accommodate 218 female vendors, members of SEWA, on the roof terrace of the existing vegetable market, and if any more space were available to accommodate 95 male associate members of SEWA who had been vending at the site for more than five years. The order asked AMC to provide to 313 vending pitches on the roof terrace measuring 4ft x 4ft, or if the space were restricted, of 4ft x 3.5ft. AMC was responsible for providing water and lighting, a cover to protect vendors from sun and rain, and a broad staircase to provide access to the terrace. AMC was also required to issue licenses for vendors and, until the space was available, interim orders restricted AMC and the Commissioner of Police from evicting or fining vendors under the *Bombay Police Act 1951*.

The SEWA members allotted vending space on the roof wanted to vend on the road as that would provide them better clientele. However, SEWA strategically agreed to the order because if they had not agreed, they would have lost the case. While agreeing to vend on the terrace, SEWA put a condition that if their members were not allowed to sit on the road, no other vendor would be allowed by the AMC to occupy the road spaces vacated by them.

The roof terrace facilities were never provided, but the order established a permanent stalemate, and the vendors continue to sit on the public ways. Due to the Supreme Court order they are the only vendors in the entire city with vending license and not hawker's license.

4.1.2 Manek Chowk, 1987-1990

Despite Supreme Court judgments harassment continued, and SEWA filed Special Civil Application (SCA) 1265/87 in the name of a Manek Chowk vendor, and joined three further applications to it, resulting in interim stay for all of them. Together the petition covered 281 vendors in the Manek Chowk. SEWA submitted that despite the Supreme Court decision, the harassment, illegal fines and physical abuse of the vendors continued. The vendors usually borrowed money to purchase vegetables and had to pay money to the local police, and if they refused they were issued with memos and followed by charge-sheets.

SEWA also submitted several other petitions for different areas where SEWA vendors were organized, including: Manek Chowk and Danapith (2875/90); Girdharnagar (1681/90); Shardaben Hospital (3166/92) and Meghaninagar and Vitthal Nagar.

By 1992, the initial case SCA 1265/87 had yet to be determined, but the High Court granted an interim stay in SEWA's favour. Even though the number of women vendors listed in the cases were limited, the effects were felt in the entire area. Finally in May, 1998, the Gujarat High Court consolidated the petitions and issued one judgment for all of them. Most significant was the rule quashing all prosecutions and restraining future prosecutions of the SEWA vegetable vendors by the Municipal and Police Authorities under the *Bombay Police Act 1951*. Although only 212 women were officially listed in addition to the 327 Manek Chowk vendors (a total of 539), the order was intended to cover all SEWA vendors.

The Court acknowledged that the vendors faced double prosecution for the same alleged offence of obstructing public streets, noting that they are fined separately by the Traffic Police and the Municipal Corporation. The order required AMC to mark out vending pitches of 4ft x 6ft in Manek Chowk, Danapith, Girdharnagar, Shardaben Hospital, Meghaninagar and Vitthalnagar. Vendors could only be prosecuted if they crossed the marked pitches. Additionally, only the Traffic Police were allowed to penalize the violations and AMC was strictly forbidden to take fines or goods from the vendors.

AMC filed an appeal against the judgement - a Letter Patent Appeal No. 815/98 in November, 1998, but after SEWA filed its rejoinder, the case remains pending. AMC also mentioned in this appeal that if five or more offences were registered against the vendors then the magistrate would investigate the matter.

4.1.3 Olga Tellis and Others vs. Bombay Municipal Corporation 1985

The case of *Olga Tellis and Others vs. Bombay Municipal Corporation, 1985* is often quoted in relevant court cases, when a group of pavement and slum dwellers in Bombay (Mumbai) and their supporters sought to oppose eviction (Appendix 1).

The gist of the case is that in 1981, the State of Maharashtra and the Bombay Municipal Council decided to evict all pavement and slum dwellers from the city of Bombay. The residents claimed such action would violate the right to life, since a home in the city allowed them to attain a livelihood and demanded that adequate resettlement be provided if the evictions proceeded. The Court declined to provide the remedies requested by the applicants but found that the right to a hearing had been violated at the time of the planned eviction.

The Court held that the right to life, in Article 21 of the Constitution, encompassed means of livelihood since, 'if there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to live'. However, the right to a livelihood was not absolute and deprivation of the right to livelihood could occur if there was a just and fair procedure undertaken according to law. The government's action must be reasonable and any person affected must be afforded an opportunity of being heard as to why the action should not be taken.

In the present case, the Court found that the residents had been rendered the opportunity of being heard by virtue of the Supreme Court proceedings. While the residents were clearly not intending to trespass, they found it was reasonable for the government to evict those living on public pavements, footpaths and public roads. The evictions were to be delayed until one month after the monsoon season (31 October 1985). The Court declined to hold that evicted dwellers had a right to an alternative site but instead made orders that:

- (i) sites should be provided to residents presented with census cards in 1976;
- (ii) slums in existence for 20 years or more were not to be removed unless land was required for public purposes and, in that case, alternative sites must be provided;
- (iii) high priority should be given to resettlement.

4.2 Case History of the PIL, 2006 onwards

In spite of the orders passed by the Supreme Court, harassment of vendors continued. As an initiative of the High Court, Special Civil Application no. 13308 of 2004 was registered, in *suo moto*⁷ cognizance of the non-observance of traffic safety rules like wearing seatbelts, removing encroachments etc on Sarkhej-Gandhinagar highway. However, this case took a different turn and the street vendors came under the purview of the case on the premise of being called 'encroachers'.

The order dated 9.5.2005 directed that "*All the encroachments which are on public streets or which are on highways should be removed immediately. Due care should be taken that the encroachments which are on the corners of the roads or near the traffic junctions or traffic circles should be removed as soon possible so as to see that such area of the road is made available for use of vehicular traffic and not for encroachers.*" SEWA held various meetings with the Police authorities and the Municipal Corporation after the order to explain them that the street vendors earning their livelihood and survival are not encroachers. In spite of these meetings 9,712 street vendors in various areas of the city were evicted in 2005.

In view of the continuing problems, in 2005 SEWA Union filed Misc. Civil Application for Contempt no. 2369 of 2004 before the High Court and a further Contempt petition 2005 in the Supreme Court. In spite of the legal action, the problems continued, and in August 2006, vendors in the Hatkeshwar area were evicted by AMC officers. Similar evictions occurred in other areas such as Manek Chowk, Girdharnagar, Jamalpur, and Mansi Complex, even though in 1992 the Manek Chowk vendors had obtained a restraining order from the Gujarat High Court.

⁷ *Suo moto* is when the High Court itself takes the initiative and requires the relevant executive body to explain to the High Court why any particular law was not being implemented

Thus in September 2006, SEWA filed a Public Interest Litigation (PIL) in the High Court of Gujarat on behalf of its members, seeking to stop the violation of their rights. The PIL's main objectives were:

- (i) to declare ss. 231 and 384 of the BMC Act *ultra vires*, by virtue of Article 39 (a) and (b): Article 14: Article 19 (1) (g) and Article 21 of the *Constitution*, and
- (ii) that under s.231 AMC be directed to implement the Draft National Policy on Urban Street Vendors, 2004. The plea of the petitioners is given in Box 3.

Box 3: SEWA's 2006 PIL - Petitioners' Plea

i)	Set up Town Vending Committees / Ward vending committees with powers to set up terms and conditions for hawking and to register vendors on payment of a monthly registration fees and monthly maintenance charges.
ii)	To refrain from forcibly evicting street vendors and denial of basic right to livelihood and provide for their relocation and rehabilitation ensuring that
iii)	Eviction should be avoided unless there is a clear and urgent public need to land in question.
iv)	Where relocation is absolutely necessary, notice of minimum 30 days should be served on the concerned vendors.
v)	Affected vendors/ representatives involvement in planning and implementation of rehabilitation project.
vi)	Affected vendors should be assisted in their efforts to improve their livelihoods standards of living or at least to restore them, in real terms to pre-evicted levels.
vii)	Loss of assets should be avoided and compensated.
viii)	That areas prescribed in the SEWA report on natural markets be declared natural markets and street vendors be allowed to carry on their vocation any restrictions on payment of stipulated registration fees and charges.
ix)	That the declaration of natural markets and space for street vendors in natural and other markets as laid down in the Nation policy for Street vendors, 2004, be provided for in the town Planning Schemes or any similar scheme governing the areas under the jurisdiction of the AMC.
x)	Pending inclusion of provisions for space for street vendors in the TPS or any similar scheme by the AMC, The AMC be restrained from prosecuting or evicting the vendors from the place they carry on their vocation and earn their livelihood.
xi)	Pending constitution of Town Vending Committees in accordance with the National Policy 2004. The responsibility and powers to take any corrective action as regards street vendors be assigned to the market committees of the street vendors or their representatives.
xii)	That JNNURM of Urban development, Government of India, be directed to make provisions for street vendors in the Development Plan for Ahmedabad

The case was filed against:

- a) State of Gujarat, under the obligation to implement the draft *National Policy on Urban Street Vendors, 2004* by formulating a state policy.
- b) AMC (Ahmedabad Municipal Corporation) under the obligation to exercise its powers under the BMC Act, 1949, and to refrain from violating fundamental rights of the vendors by evicting them, seizing their goods or prosecuting them.
- c) AUDA (Ahmedabad Urban Development Authority) under the obligation to make provisions for street vendors in view of the national policy and obligation to provide adequate space for markets under the GTPUD Act, 1976.
- d) Commissioner of Police against violation of the fundamental rights of members of SEWA and other street vendors by evicting them, and depriving them of their livelihood.
- e) JNNURM (Jawaharlal Nehru National Urban Renewal Mission) against eviction of street vendors without provision of alternative space.

The petition went through many twists over a four year period. **Appendix 2** gives a chronological account of the various orders of the Gujarat High Court and Affidavits filed by SEWA and AMC in response to the orders. The courts are empowered to issue interim orders requesting either the petitioner or the respondent to provide additional information for the case.

SEWA's petition was first reviewed in 2006, when the petition relating to ss.231 and 384 of the BMC Act was declared outside the jurisdiction of the High Court. SEWA then submitted Public Interest litigation on the basis that the draft *National Policy on Urban Street Vendors, 2004*, (NPUSV) had not been implemented. Subsequent orders in 2006 requested AMC to provide its policy on street vendors. In response, AMC then showed the scheme framed in 1998 as its policy which provided nine relocation sites for street vendors.

SEWA then filed a petition to say that harassment continued and that the draft NPUSV, 2004, replaced the 1988 provisions, and that a new Scheme should be prepared based on the new policy. The High Court directed that the two parties meet to try and resolve the grievance, and that street vendors should not be evicted in the meantime. In 2007 AMC filed an affidavit to the effect that the existing Scheme was sufficient.

By 2008 the High Court intervened on the basis that no Scheme had been finalised and gave AMC three months to finalise the scheme based on consultations with SEWA. When the deadline was not met, SEWA prepared a Scheme and gave it to AMC, although AMC argued that several of the relocation plots identified were unsuitable. At the hearing in early 2009 SEWA filed an affidavit to argue that a draft Scheme had not been submitted and vendors were still being harassed. The High Court gave AMC until March 2010 to prepare a draft Scheme.

In May 2009 SEWA filed an affidavit to the effect that vendors were being evicted for the Bus Rapid Transit Scheme with no alternative provision. Over the next few months, various submissions were made relating to the production of the draft Scheme. In February, AMC submitted a consultant's report, but the High Court ruled that this did not constitute a Scheme, and a Commissioner appeared before the court to requesting a further week to produce the draft Scheme.

A draft Scheme was finally presented to the High Court on 2 March 2010, allocating three categories of vending zones: *green* where vending is allowed; *amber* where vending may be

allowed under certain restrictions, and *red* where vending is not allowed. The court accepted the submission. SEWA filed an affidavit noting flaws in the consultant's report, specifically that it had overlooked the concept of *natural markets*; SEWA had identified 174 natural markets in Ahmedabad. The High Court ordered appropriate modifications to the Scheme to be negotiated between SEWA and AMC.

In April 2010 SEWA formally requested modifications to the draft Scheme, on the basis that the draft NPUSV, 2004, had not been adequately considered and that *natural markets* should be regularised. AMC accepted some of the suggestions, and modified the draft Scheme accordingly, but gave wide powers to the proposed Town Vending Committee (TVC) concerning *natural markets*. The Gujarat Government filed an affidavit giving permission for the TVC to be set up. SEWA made a final submission that if the draft Scheme were implemented unchanged then 129 out of the 174 *natural markets* identified would be adversely affected.

A final judgement was issued in August 2010, nearly four years after the initial petition was heard, to the effect that the Scheme could be finalised, taking into account further amendments, and after proper provision was made for rehabilitation (relocation), and if due notice were given, evictions could proceed.

Discussion of the PIL Approach

The way the PIL has unfolded suggests that using existing legislation to establish the legitimacy of street vending is fraught with difficulty.

The first plea taken up by SEWA, that the restriction of street vending in public places through the ss. 231 and 384 of the BMC Act is indeed *ultra vires* of the *Constitution* and the Fundamental 'right to life' in Article 21, and 'right to trade' in Article 39. However, the Gujarat High Court stated that it was not within its jurisdiction to hear this matter. It is not understood why such a position was taken. As a result, SEWA proceeded with the PIL that the NPUSV, 2004, should be implemented.

The narrow base of the plea to get the national policy implemented has led to the framing of a Scheme that is very biased against vendors, and violates both Article 21 and Article 39 of the *Constitution*. SEWA, as petitioners, now have two options left; (i) to go to the Gujarat High Court and apply to a Revision Bench and (ii) to go to the Supreme Court and challenge the scheme on the basis of violation of the Article 21 and Article 39 of the *Constitution*. As of August 2011, SEWA had not yet taken a view on it.

The moot point however is this: is the 'right to livelihood', defined in the case of *Olga Tellis and Others vs. Bombay Municipal Corporation and Others, 1985*, only a legal issue or an issue of policy? Would legal processes entangle the issue further? Should the courts decide or should the Executive decide about protecting the rights of the poor. To our understanding, the rights of the poor cannot be defended only through legal instruments, there has to be a political understanding and favourable political economies and local state for that to happen.

4.3 Manushi Sangathan vs. Delhi Development Authority

The rights of street vendors have been further tested by several cases in Delhi supported by the NGO Manushi Sangathan. In 2009, in the case of *Manushi Sangathan vs. Delhi Development Authority (DDA)*⁸ the NGO appealed against the 2008 decision to removed 68 vendors from Nehru Place, a commercial centre in South Delhi. The appeal was made to determine the right of hawkers and their regulation by local authorities.

In 2003, the applicant submitted a proposal for regulated, controlled and systematic hawking in Nehru Place, prepared by the School of Planning and Architecture, Delhi. The total number of vendors was around 300, and alternative places had been found for 102, but around 68 still remained. In 2007, fearing eviction, the December, 2007, the NGO filed Writ no. 9407/2007, suspecting that on basis of an earlier decision dated 18th April, 2002 declaring Nehru Place as a Zero Tolerance zone, the hawkers under the pilot project would be evicted. While the write petition was pending *"the DDA without any notice and prior warning suddenly swooped down on the hawkers vending their products under the pilot project and forcibly removed them and confiscated the goods/articles suddenly swooped down on the hawkers vending their products under the pilot project and forcibly removed them and confiscated the goods/articles"* (s.35).

The judgement referred to several earlier cases, including the Supreme Court case of *Sodan Singh and Ors vs. New Delhi Municipal Committee, 1989*, which held that hawking on roadsides is an occupation, trade or business enshrined in Article 19(1)(g), but is subject to reasonable restrictions, and that no person should create an unreasonable obstruction which causes a nuisance to others (s.12); that judgement further argued that the provisions of the Municipal Acts *'should receive a beneficial interpretation, which may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment'*. That judgement further noted that while no-hawking zones may be created for good reasons such as public health, sanitation, safety, or public convenience, but the *"the Supreme Court did not approve of the principle that all major traffic and arterial roads should be automatically excluded from hawking zones"* (s. 15).

More importantly, although at a meeting on 18 April 2002, the DDC had declared Nehru Places as a *Zero Tolerance Zone* where no violation of the law would be permitted the judge in the Manushi Sangathan case determined that *"street vending on its own by itself does not result in violation of the law unless for justifiable and valid reasons hawking/street vending is prohibited or restricted in a particular area"*. The judgement therefore determined that, *"There was no need for such haste and hurry on the part of the DDA to remove hawkers under the pilot project. We may also note here that DDA has not made any allegation that the appellant-NGO or any of their hawkers had violated the terms of the pilot project or the undertakings given or the said appellant-NGO had misused or abused the permission for controlled and regulated hawking in Nehru Place"* (s.38), and that as the DDA had accepted the pilot project for regulating hawking in Nehru Place, and hawking was not illegal, the declaration of Nehru Place as a non-hawking area was *"incorrect and wrong"*.

Furthermore the Master Plan of Delhi 2021, makes reference to the rights of hawkers (Clause 5.1) in district centres, which includes mention of Nehru Place, and in the light of the NUSVP of

⁸ Manushi Sangathan, Delhi vs. Delhi Development Authority & Ors., 17 April 2009, High Court Judgement, <http://www.indiankanoon.org/doc/996423/>

2004 (then current), the Municipal Corporation of Delhi had framed a scheme for squatters/hawkers in 2007. The MCD scheme of 2007 was considered by the Supreme Court in the case of Sudhir Madan and Ors vs. Municipal Corporation of Delhi and Ors, 6 February 2007, in which the Supreme Court set conditions for the relocation of vendors.

The judgement concluded that the respondents, especially the DDA, had not followed the guidelines of the Supreme Court, Master Plan of Delhi, the NPUSV 2004, and the MCD scheme for squatters/hawkers in 2007. The meeting of 18 April 2002 did not support the contention that Nehru Place was a non-hawking zone, and that DDA had acted illegally in removing the hawkers operating under the pilot project. The judgement concluded that 67 vendors (one had left) should be permitted to hawk on the pilot project area, although it was open to DDA to examine whether Nehru Place or the said area should be declared a non-hawking zone. Any removal of vendors should be under the terms of the case by Sudhir Madan.

The appeal was thus partially allowed, but as with many judgements, restrictions limited the interpretation and application of Constitutional rights.

5.0 Ahmedabad Street Vendors' Scheme, 2010

As discussed in Section 4, the scheme was framed by AMC under the High Court order of 16/3/2009, under the SCA⁹ petition no:18058/06 filed by SEWA against the Gujarat State Government, Ahmedabad Municipal Corporation and others, in order to implement the NPUSV in Ahmedabad, to make provisions and adequate space for vendors, and to restrict the authorities from violating the fundamental rights of the vendors by evicting them and prosecuting them.

The *Ahmedabad Street Vendors' Scheme, 2010*, that emerged from the PIL process, lays out: the functions and composition of the Ahmedabad Town Vending Committee (TVC); eligibility and conditions for vending in the city; the licensing fee structure, and vendor identity cards.

The major functions of the TVC should be to provide amenities to the vendors in vending zones; formulate rules and regulations to register vendors, carry out regular surveys and decide on the number of registered vendors to be permitted in the vending zones; decide the fee structure for the vendors; fix the dates, time and days of functioning of the vending zones; keep a quality check on the goods sold; provide for skill enhancement of the vendors, provide them with credit schemes and insurance and also reserve plots in old and new Town Planning schemes for vending activities. The TVC should be monitored by a monitoring committee, eg: the Standing Committee formulated under the BPMC Act. The Scheme also outlines the types of vending zones and various parameters to define the vending zones including the timings of operation.

Vending zones: Three vending zones described are as follows:

1. *Green vending zone:* Vending is permitted in residential areas on roads less than 15 meters wide from 7am to 9am on all days.
2. *Amber vending zone:* Vending is permitted in commercial zones on roads more than 15 meters wide from 6am to 9am and 6pm to 9pm on all days; in institutional zones there would be restrictions on the products sold with timings from 7am to 7pm; in heritage zones vending is permitted 200 meters away from heritage sites on all days.
3. *Red Zone:* No vending is permitted on roads more than 30 meters wide, on roads with heavy traffic, or within 200 meters radius of a heritage zone or in major commercial zones.

By confining vending within these zones, the policy overlooks the important features of allocation and demarcation of *natural markets*. According to the case presented by SEWA, if the scheme is implemented then 129 markets of 174 natural markets in Ahmedabad, mapped by SEWA would be adversely affected and thus would be depriving livelihoods of 38,908 vendors and their families. Vending zones should be created in close proximity to already existing *natural markets*, which is not the case here.

Eligibility: The eligibility criteria for a vending license include the following: the applicant has to be above 18 years of age and should either have Identity Card, Voting Card, or BPL card. The license will be permitted for a maximum of 3 years, but there is no mention of renewal so after 3 years the vendor's legal status is uncertain. The Scheme also requires that the applicant be residing in the city 10 years before 31/12/2009, which excludes more recent arrivals.

⁹ SCA - Special Civil Action

The scheme stipulates that only those for whom street vending is the only source of livelihood are eligible for a license. However, vending is a time based activity, for example vegetable vending markets normally operate in the early morning and evenings, and many vendors rely on other activities for additional income.

The scheme tries to institutionalize some street vendors through legalisation, zoning, and registration while excluding the rest (ie those who have come to the city after 31/12/1999 and those with a secondary occupation) as illegal. The Scheme also designates large areas of the city as illegal for vending. The Scheme does not determine the procedures for evictions and resettlement, particularly in the case of major infrastructure projects such as the Kankaria Lake development, the Bus Rapid Transit System (BRTS) and Sabramati Riverfront, all of which have affected vendors.

The biggest flaw of this scheme is that it overlooks the concept of 'natural markets'. Natural markets are those places where the vendors tend to naturally flock together as there is available clientele. These are largely public places, religious places, transport terminals and major road junctions. If the markets are allowed to be developed where there are no people, they do not serve either the vendors or their clientele.

6.0 Conclusions & Recommendations

India has a powerful and widely respected legal system, in which the role of the judiciary in setting legal precedent is significant. The focus of those campaigning to support street vendors has been on reform of the existing legal system, rather than on seeking new or intermediate forms of legitimacy as has been explored in other countries studied in the research. It is clear that the legal environment in which street vendors operate is complex with conflicting policy and regulations at national and state level, and contradictory powers held by urban local bodies and the Police.

Conflict between constitutional and other legal rights: India has a well-articulated systems of rights set out in the *Constitution* (2011 amendments), but in the judgement case of *Olga Tellis and Others vs. Bombay Municipal Corporation and Others 1985*, Fundamental Rights were given less weight than powers under other legislation. This suggests that in practice constitutional rights may be less precise and therefore carry less weight than other more restrictive legal provisions.

In the case of *Olga Tellis*, the judge concluded that the Fundamental Right - the 'right to life' in Article 21 of the *Constitution* - included a 'right to livelihood' as '*that which makes it possible to live....must be deemed to be an integral component of the right to life*' (**Appendix 1**). Nevertheless, the judgement argued that, under s.61 of the *Bombay Municipal Corporation Act*, there is obligation to remove obstructions on public streets and that hutments on pavements form a 'serious impediment' on streets. The judgement concluded that, '*Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads*'. The *Olga Tellis* case has been used as a precedent in other court cases to evict pavement dwellers and street vendors.

National policy: The *National Urban Street Vendors Policy* (NUSVP) is perhaps a rare example of a national policy on the informal sector, and demonstrates the extent to which coalitions of the urban poor have been able to influence national agendas. The 2004 draft represents good practice, identifying practical proposals for legal change that would remove some of the anomalies in the system. The 2009 revisions have rolled back from some of the more influential provisions of the earlier draft. In particular the lack of recognition of the importance of *natural markets* (places where a confluence of pedestrian and vehicle movement provides an excellent location to trade) is a major omission. There are now efforts to roll-back this restrictive policy and a model bill, in tune with the 2004 NUSVP is being framed.

Common grounds of eviction: The legislation has a number of provisions which permit the eviction of street vendors. Two sections of the *Bombay Provincial Municipal Corporation Act, 1949*, are commonly used: s.231 which provides for the removal of permanent or temporary structures in streets, and s.384 which stipulates the need for a license for hawking in a public place. These sections are contradictory as vendors with a legal license may still be evicted under s.231. The recommendation in the NUSVP to remove this contradiction has not been pursued.

Public interest litigation: PIL has gained ground in India since a series of cases during the 1980s in which third party evidence was accepted in court, and is now widely used by middle class activists seeking legal redress. It is less accessible to the urban poor unless represented by an

informed organisation such as SEWA. As a result of PIL cases, the courts are increasingly determining urban policy. However, there can be significant delays in a case being determined, sometimes many years, and the outcome depends on the experience and opinion of the judge. SEWA's experience with the 2006 petition that the NPUSV should be implemented in Ahmedabad is revealing. The process was time-consuming and convoluted, and the resulting street vendor Scheme is likely to be much more restrictive than what the national policy intended. Their extensive attempts to negotiate with Ahmedabad Municipal Corporation have been largely unsuccessful. A more open policy process would obviate the necessity of using the courts to determine urban management issues.

Ahmedabad Street Vendors' Scheme: In recent years, Gujarat State and Ahmedabad Municipal Corporation have followed a number of major infrastructure-led development projects which have had limited focus on poverty-reduction. The *Ahmedabad Street Vendors' Scheme* creates no-vending areas in large parts of the city that were previously unrestricted or not tightly policed. The Scheme thus appears support the infrastructure development agenda rather than recognise the importance of livelihoods of the urban poor, both to poverty reduction and local economic development. A fundamental change in attitude is required.

Recommendations

1. Amendments are urgently needed to sections of legislation that make it an offence to sell or hawk goods in a street, or obstruct a public way, to explore their combined impact on street vendors and make appropriate exceptions. The relevant sections include:
 - ss.231 and 384 of the *Bombay Provincial Municipal Corporation Act, 1949*
 - s. 283 of the *Indian Penal Code, 1860*
 - ss. 67 and 102 of the *Bombay Police Act, 1951*, and
 - s.201 of the *Motor Vehicle Act, 1988*
2. Town planning regulations are defined under the *Gujarat Town Planning and Urban Development Act, 1978*, and has the powers to allocate sites for street vending but at present does not. One of the problems with current planning legislation is that the site allocation process is mostly for land off a public highway; mixed use of streets for traffic movement and vending is not considered. So while the Act imposes a duty to allocate space for public amenities, designation of street for anything other than vehicle use is not envisaged. A legal view is required to see whether an amendment to the Act would be required to allow dual use of streets to be designated.
3. Urban planners and urban designers, dealing with public spaces should become proactive to try innovative solutions to multiple demands on public spaces. There is lack of such an engagement of professional today.
4. The establishment of Town Vending Committees is relatively new, and it is not clear whether there is an appeal procedure against decisions made by the TVCs (eg: the designation of areas as No-Vending Zones'). The establishment of an independent appeals board may remove the need for those aggrieved to go through the courts, thus speeding appeals time.

5. A crucial problem with the existing regulatory system for managing street vending is that there is limited recognition in the legislation and policy of the potential collective management of urban space. The legislation puts the onus on individuals to obtain a license and vend in an approved location. This system is difficult to police and manage because of the numbers of individuals involved. Instead it would be better to allocate management responsibility to a collective of street vendors, particularly in busy areas with large concentrations of vendors. While the NPUSV recognises the potential of collective arrangements by street vendors (Para 4.7) this is only to '*redress any harmful effects*' of street vending.
6. NASVI should work with a research organisation to develop an Observatory of Laws and Regulations affecting street vendors in different states of India, and information on how street vendors associations are negotiating their rights.
7. SEWA and other organisations advocating for the rights of street vendors should research how the new UID card (unique identity card) can help street vendors, for example in collective management
8. Above all, there should be multi-pronged approach to get street vendors their right in the cities. A legal approach alone may not deliver the results, as the PIL case of Ahmedabad suggests.

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APPENDIX 1:

Judgement of Olga Trellis and Others vs. Bombay Municipal Corporation and Others 1985

Judgement in the Supreme Court of India by the bench of Chief Justice Y.V.S. Chandrachud, S. Murtaza Fazal Ali, V.S.D. Tulzapurkar, O. Chinnaappa Reddy and A. Varadarajan JJ. in *Olga Tellis and Others vs. Bombay Municipal Corporation and Others, and Vayyapuri Kuppasami & Others Vs. State of Maharashtra & Others* (Dutta et al 2000)¹⁰

Extracts from the judgement are given below.

*'As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwelling, their eviction is tantamount to deprivation of their life and hence is unconstitutional. For the purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwelling, they will be deprived of their livelihood. Upon that assumption, the question we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, **namely that it does**¹¹. The sweep of the right to life conferred by Art. 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life, an equally important facet of that right is the right to livelihood because, no person can live without the means of livelihood. If the right to livelihood is not related as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.'* (pp. 427).

The judgement then goes on to justify the rural-urban migration of the poor, stating the reason for migration is seeking livelihoods.

The judgement says that there is a deep connection between life and means of livelihood. *'They have to eat to live: Only a handful can afford the luxury of living to eat...'* (pp. 428). The judgement also states that right to work is the most precious liberty, quoting from an earlier judgement by *Douglas J. In Baksey (1954) 347 M.D. 442* (pp. 428).

The bench takes the view that while the Article 21 grants right to life and livelihood, there is also a provision that these can be deprived according to procedure established by law. The law which allows the deprivation of the right conferred by Art. 21 is the Bombay Municipal Corporation Act, 1988, and the relevant provisions of these are Sections 312(1), 313(1) and 314.

¹⁰ http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=401006, accessed on March 2011

¹¹ Bold by the authors

'These provisions which are clear and specific, empower the Municipal Commissioner to cause to be removed encroachments on foot paths or pavement over which the public have a right of passage or access. It is undeniable that, in these case wherever constructions have been put up on the pavements, the public have a right of passage or access over those pavements. The argument of the petitioners is that the procedure prescribed by S. 314 for the removal of encroachments from pavement is arbitrary and unreasonable since, not only does it provide for the giving of notice before the removal of an encroachment but, it provides expressly that the Municipal Commissioner may cause the encroachment to be removed "without notice"'. (pp. 429).

'Just as a mala fide act has no existence on the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair play.' (pp. 429)

The bench then adjudicated: *'Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Sec. 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust'.* (pp. 429-30).

'In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and repassing, are competing claims and that, the former should 'be preferred to the latter. No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser'.(pp. 430).

The judgment therefore pronounced pavement dwellers as trespassers.

'The common example which is cited in some of the English cases (see, for example, Hlrfcman v. Maisey, [1900] 1 Q.B. 752, is that if a person, while using a highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his user of the pavement would become unauthorised'. (pp. 430)

The judgment used a very old case law dating from 1900 to justify the order.

'Section 61 of the Bombay Municipal Corporation Act lays down the obligatory duties of the Corporation, under clause (d) of which, it is its duty to take measures for abatement of all nuisances. The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing. They are compelled, by reason of the occupation of pavements by dwellers, to use highways and public streets as passages. The affidavit filed on behalf of the Corporation shows that the fall-out of -pedestrians in large numbers on highways and streets constitutes a grave traffic hazard. Surely, pedestrians deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose, unauthorisedly. Under clause (c) of C section 61 of the B.M.C. Act, the Corporation is under an obligation to remove obstructions upon public streets another public places. The counter-affidavit of the Corporation shows that the existence of hutments on pavements is a serious impediment in repairing the roads, pavements, drains and streets. Section 63(k), which is discretionary, empowers the Corporation to take measures to promote public safety, health or convenience not specifically provided otherwise.'(pp. 430)

Pavement dwellers were also considered as nuisance, public hazard and encroachers.

'Anyone who cares to have even a fleeting glance at the pavement or slum dwellings will see that they are the very hell on earth. But, though this is so, the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice'. (pp. 431).

'The jurisprudence requiring hearing to be given to those who have encroached on pavements and other public properties evoked a sharp response from the respondents counsel. "Hearing to be given to trespassers who have encroached on public properties? To persons who commit crimes?", they seemed to ask in wonderment. There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to "commit an offence or intimidate, insult or annoy any person", which is the gist of the offence of Criminal trespass under section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice. Trespass is a tort. But, even the law of Torts requires that though a trespasser may be evicted forcibly, the force used must be no greater than what is reasonable and appropriate to the occasion and,

what is even more important, “the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him”.(pp. 431-32).

'The charge made by the State Government in its affidavit that slum and pavement dwellers exhibit especial criminal tendencies is unfounded'. (pp. 432)

“The charge of the State Government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers, when caught, defend themselves by asking, "who does not commit crimes in this city ?”(pp. 432)

The judgement was: *'Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads'. (pp. 432)*

Thus, the judgement supported the Municipal Corporation’s plea of allowing to displace the pavement dwellers.

Appendix 2: PIL Litigation

This appendix lists the various orders that followed SEWA's petition in 2006 that ss.231 and 384 of the BMC Act 1949 were *ultra vires* and, following the dismissal of this point, details of the subsequent PIL that the *National Policy on Urban Street Vendors' 2004* had not been implemented. The list includes High Court orders and affidavits filed by SEWA and AMC.

<i>Order of 4/9/2006</i>	Hon'ble Court ordered that SEWA has challenged the <i>vires</i> of the provisions of ss.231 and 384 of the BMC Act 1949 and hence this bench cannot hear and the matter, which should be placed before appropriate Court
<i>Order of 7/9/2006</i>	Hon'ble High Court admitted the petition with regards to implementation of the Draft National Street Vendors' Policy, 2004 and issued notice on the respondents
<i>Order 2/11/2006</i>	Hon'ble High Court through its order directed AMC to state the steps in particular action taken by AMC with regards to the vendors issue so far and further stated that AMC shall inform the Hon'ble Court what their policy was for rehabilitating these persons or which particular areas were being earmarked by them for settlement of the street vendors
<i>Affidavit of AMC filed on 13/11/2006</i>	This stated that the AMC had framed Scheme for the vendors in 1988 as per the Order of Hon'ble Supreme Court of India and gave details of the nine plots allotted to the street vendors under the Scheme
<i>Affidavit of SEWA on 28/11/2006</i>	SEWA filed affidavit stating that the harassment in form of evictions and convictions continued and also stated that the Scheme of 1988 would no longer hold good as the city had expanded since then and the National Policy for street vendors came into existence in 2004. It further submitted that the AMC was required to prepare the Scheme based on the National Policy on Urban Street Vendors, 2004, which AMC had not, in spite of SEWA repeatedly meeting the AMC officials for the purpose
<i>Order of 29/11/2006</i>	Hon'ble High Court directed that AMC, SEWA and Ahmedabad Urban Development Authority (AUDA) should first have meeting and sort out the grievance sitting across the table and the Court also showed hope and trust that none of the vendors would be disturbed by AMC till grievance was sorted out
<i>Affidavit of AMC on 23/1/2007</i>	AMC filled an affidavit stating that it has once again passed the Scheme for vendors prepared in 1988 and claimed that when there already was a Scheme the street vendors' petition should be dismissed
<i>Order of 17/11/2008</i>	The Court ordered that despite of order passed by this Hon'ble Court earlier to sort out the grievance mutually and to frame a Scheme after taking into account the petitioner grievance, no such Scheme was finalized so far and hence the AMC should finalize the Scheme within three months of passing of this order after taking suggestions from SEWA
<i>Affidavit of SEWA on 18/12/2008</i>	SEWA filed the affidavit that the meeting was held by the AMC with them, but no Scheme was prepared by the AMC. Instead SEWA prepared the Scheme and gave the same to AMC. The Court had ordered Municipal Commissioner to hold the meeting; instead Deputy Municipal Commissioner had held the meeting. On the insistence of SEWA another meeting on the eve of hearing was held with Municipal Commissioner in which many points like registration of vendors and formation of committee were decided. SEWA also stated that it made schematic plans for 5 plots out of 9 plots allotted by AMC for the vendors and submitted the same to AMC and stated that 4 plots were not suitable for vendors

<i>Affidavit of SEWA on 16/2/2009</i>	On the day of the hearing in the High Court, SEWA filed the affidavit to the effect that despite of the meeting with the Municipal Commissioner no draft Scheme was prepared and on other hand the vendors were being harassed and evicted specially in Hattkeshwar and Jamalpur areas
<i>Order of 16/3/2009</i>	The Court again directed the AMC to prepare the Scheme and place it before the Court before 6/3/2010
<i>Affidavit of SEWA on 8/5/2009</i>	It stated that the vendors were being evicted due to the infrastructure projects carried under the JNNURM and no provision for the vendors was been made under the BRTS, Riverfront etc and neither budget of AMC reflected any amount reserved for vendors. Secondly AMC had submitted the task of preparing the Scheme to CEPT University ¹² but SEWA has not received any contract or letter regarding this despite of asking the respondent's advocate for the copy
<i>Affidavit of AMC on 1/7/2009</i>	Affidavit filed by the AMC stated that the preparation of the Scheme was already been allotted to CEPT University and that the latter had stated that it would take 16 months time to complete the same. It also stated that the CEPT University had already submitted the work plan for the same
<i>Order of 27/7/2009</i>	The High Court ordered AMC to produce the report prepared by the CEPT University. It also asked the AMC to produce relevant materials before the CEPT University, including the National Street Vendors Policy as the Corporation had entrusted the matter to CEPT University. It further directed the AMC to let the police know that they should not harass the vendors till the Scheme was framed
<i>Affidavit of AMC on 6/10/2009</i>	The AMC through its affidavit submitted the inception report of CEPT University and requested for further time to finalize the Scheme
<i>Order of 11/1/2010</i>	As AMC asked for more time to prepare the Scheme the matter was adjourned
<i>Order of 10/2/2010</i>	The Court had given the last chance to the AMC to prepare the Scheme. AMC failed to do the same. Therefore the Court directed the authorities of AMC to present before the Court and assist the Court
<i>Affidavit of AMC 22/2/2010</i>	The AMC tried to submit the final report prepared by the CEPT University as a 'Street vendors policy for Ahmedabad city'. The Chief Justice of Gujarat High Court rejected that and asked the AMC to produce the Municipal Commissioner of the City before the Gujarat High Court. The Court was angry that the AMC had produced a policy document prepared by the CEPT University and was passing it off as a document of 'Street Vendors' Scheme'
<i>Order of 23/2/2010</i>	Mr. I.P. Gautam, Commissioner, Municipal Corporation, personally appeared in person before the Court and asked for apology for not producing the draft Scheme before the Court and prayed for being allowed a week's time to produce the draft Scheme in terms of the Courts orders passed earlier
<i>Affidavit of AMC on 2/3/2010</i>	Through the affidavit, the AMC presented the draft Street Vendors Scheme 2010 and the resolution through which the Scheme was passed in the Standing Committee. According to this draft Scheme, AMC proposed three categories of vending zones: a) Green Vending Zone- Free vending zone, on 15 m roads where vendors can vend without any restriction b) Amber Vending Zone- Which is restricted vending zone on roads 15 m to 30

¹² The was undertaken by a consultant team from CEPT University but it not a CEPT University report.

	<p>m roads, where vendors can vend from 6 am to 9am and from 6 pm to 9 pm with permission of the AMC</p> <p>c) Red Vending Zone – Which is a no vending zone, on roads 30 m and wide. Also, areas around 200 m of any heritage monument would be red vending zone, in essence where vending would not be permitted.</p>
<i>Order of 3/3/1010</i>	The Court ordered: <i>'it is stated that a draft Scheme approved by the Standing Committee of the Corporation has been filed. Office is directed to keep it on record'</i>
<i>Affidavit of SEWA on 15/3/2010</i>	SEWA filed an affidavit commenting on the final report of the 'Street Vendors Policy for Ahmedabad city' prepared by the CEPT University. It stated that the document submitted by the CEPT University was a report and not a Scheme. It further stated that the CEPT University survey was done only in 5 wards of Ahmedabad and not the whole city. Lastly, the CEPT University completely overlooked the concept of <i>natural markets</i> ¹³ and had not included either demarcation of these markets (whose survey was available with the SEWA) and also did not allocate any space for these markets
<i>Order of 16/3/2010:</i>	<p>The <i>'Learned Sr. Advocate Mr. P.G. Desai appearing for the AMC stated that a draft Scheme has already been forwarded to the State government for its approval. Learned Counsel appearing on behalf of the SEWA members submitted that proper safeguard had not been taken with regards to the street vendors as per the national policy. It is stated that hawkers-vendors like vegetable vendors may sell fresh vegetables in the city everyday at some places allotted to them but no such provisions had been made'.</i></p> <p><i>'Having heard learned counsel for the parties, we are of the view that the SEWA members and AMC should find out safeguards for the vendors, particularly, vendors selling fresh vegetables etc. every day in the street. If so requires, necessary modification can be made in the Scheme already forwarded. For this purpose the four representatives of SEWA to take up and discuss the matter with the Commissioner, AMC who after necessary discussions, may forward additional Schemes for insertion in the existing draft Scheme already forwarded an in case the Commissioner disagrees to frame any additional Scheme, will give grounds for such disagreement'.</i></p>
<i>Affidavit by SEWA on 10/4/2010</i>	<p>This affidavit gave suggestions for the modifications in the drafting Scheme prepared by AMC.</p> <ol style="list-style-type: none"> Provisions of National Policy not considered by AMC especially regarding natural propensity of the vendors to congregate in one market. Regularizing the natural markets - SEWA has mapped 174 natural markets in Ahmedabad. These natural markets should be regularized either through preparing schematic plans or where it is not possible, to regulate the natural market by making schematic plans and then providing alternative plots in the immediate vicinity
<i>Affidavit by AMC on 16/4/2010</i>	This affidavit was filed by AMC giving response to the suggestions given by the SEWA regarding modification in the draft Scheme for vendors prepared by AMC. It stated that the AMC had amended the draft Scheme to include certain suggestions given by SEWA regarding welfare of vendors. In this affidavit, it could be seen that the AMC did not modify the Scheme to regularize the natural markets by preparing schematic plans to provide alternative space to them in the immediate vicinity.

¹³ Natural Markets are those where a confluence of pedestrian and vehicle movements provides an excellent location to trade

	Instead, the AMC Scheme gave wide powers to the Town Vending Committee (TVC) without giving provisions in the Scheme as to how to regularize the natural markets
<i>Affidavit of AMC on 19/4/2010</i>	The AMC informed the Court that four suggestions given by the SEWA were accepted by the AMC and a supplementary Scheme modifying the earlier Scheme had already been forwarded to the State. The State prayed for two weeks time to go through the modified Scheme and to allow the state to pass appropriate order. More hearings follows.
<i>Affidavit of the State Government on 26/7/2010</i>	The state government filed an affidavit giving AMC permission to constitute the Town Vending Committee (TVC), as required in the NPUSV, 2009
<i>Order of 27/7/2010</i>	The High Court directed that if the approval by the state government on the draft Scheme or modified draft Scheme framed by the AMC was not required then the state government may communicate such a decision to the AMC
<i>Affidavit by the State Government on 3/8/2010</i>	The state government once again filed an affidavit stating that its approval was not required for the implementation of the draft Scheme for vendors prepared by the AMC and hence the Scheme should be implemented by the AMC as early as possible
<i>Order of 4/8/2010</i>	Hon'ble Court ordered that the affidavit of the compliance has been filed on behalf of the state government and that the matter was adjourned
<i>Affidavit by SEWA on 25/8/2010</i>	This emphasized that the natural markets should be considered in the draft Scheme prepared by the AMC. SEWA stated that if the Scheme was implemented as it is then 129 out of 174 natural markets in Ahmedabad would be adversely affected thus depriving 38,908 vendors of their livelihood and depriving 946,015 customers of services at the door step.
<i>Final Judgement of 27/8/2010</i>	<p>The final judgement was as follows:</p> <ol style="list-style-type: none"> 1. <i>The AMC is hereby directed to finalize the draft Scheme taking into consideration further amendments, as were suggested by the four representatives of SEWA and accepted by the AMC and publish the Scheme for the street vendors of Ahmedabad within one month from the date of receipt of this order.</i> 2. <i>If any specific place has been made for rehabilitation, vendors should be informed in writing.</i> 3. <i>Proper implementation of the Scheme should be made within six months from the date of publication of the Scheme.</i> 4. <i>After such settlement of the street vendors in accordance with the Scheme, the authorities may proceed with eviction of those who have authorized occupied one or other place,</i> 5. <i>Before removing unauthorized street vendors, an opportunity should be given to such vendors, at least by intimation through public address system'.</i>

Appendix 3: Authors

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