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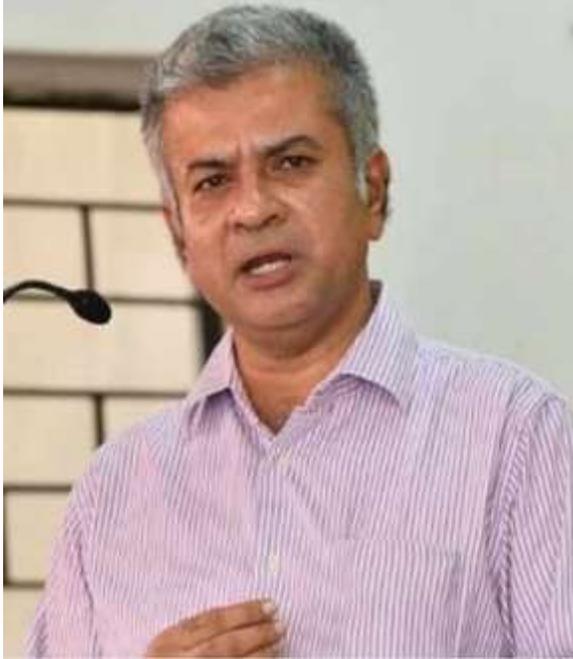
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

STORY OF AN EGALITARIAN SOCIETY: A PERTINENT OBSERVATION ON APPOSITE LEGAL ACTION AID TO HAWKERS AND STREET VENDORS IN INDIA

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Abstract

Liberty, Justice, Equality in Equal status are the key backers of the law. Normalizing and easing the activities of citizens by adopting laws and natural justice principles is not only to have a society, rather than all of that shaping an egalitarian society and well-formed culture is a pertinent aspect of law. Concerning questions like, how an egalitarian society will form while the laws have been dealing with few contradictions directly and indirectly? Why a particular category of society being examined by laws is and what did our changing lawmakers do to eradicate such problems? are the bones of this study. Hawkers have been facing such questions for a long time which yet couldn't be answered in a right way. In India there have been efforts to recognize and regulate street vending, further changes and improvements are needed to ensure the well-being and empowerment of street vendors. This need is the motive to write this paper and since many studies on street vendors have been published, how this study is unique from others is the methodology that was kept in this work. This work is classified into three parts. First part can give a brief acknowledgement of street vendors, Second part discussed street vendor's rights, how a conducive atmosphere has been born, Acts which are more relevant to vendors. The third part is finding the problems of hawkers and suggestions to reduce that predicament. This work is giving more answers indirectly to hidden questions.

PART - I

Introduction

Hawkers and street vendors are the humans who have been dedicated to fill the lacuna of their life, to be the breadwinner of their family. They are being exerted to get self-satisfaction and pedestrians Satisfaction (They seem that while returning from duties with tiredness Street vendors are helpful to them for buying goods).Every Street vendor has a untold story of how he become reach this stage and what was the circumstance led to do this job? But instead of expressing all churlish expressions they could stand and give smiles to customers. That made them dissipates the glorious past from their brain.

In the Indian scenario there are a huge number of Street vendors and Hawkers. It's a means of life for someone. According to the Ministry of Housing and Urban Poverty Alleviation, there are around 10 million street vendors in India.

Street vendors play a significant role in the informal economy of India. Providing livelihoods for millions of people and offering essential goods and services to communities are adding their values. While there have been efforts to recognize and regulate street vending in India, further changes and improvements are needed to ensure the well-being and empowerment of street vendors.

Street vendors

Hawkers are recognized as an activity which represents cultural capital and serves as an effective poverty alleviation solution by providing entry level employment to the urban poor. Hawkers which refer to people who sell goods on the streets that range from food items, clothing, household items, and many others do have rights in India. The government of India recognizes that these individuals represent an important part of the country's informal economy.

The following are the significant rights of hawkers:-

1. Right to Livelihood
2. Right to Public Space.
3. Right to Legal Protection.

4. Right to Move Freely.

5. Right to Fair Treatment.

To ensure that these rights are respected and upheld to enable the hawkers to continue earning a decent living, the state has certain duties and rights. "In India there are a large number of people who are engaged in the business of "street trading". There is hardly a household where hawkers do not reach. The housewives wait for a vegetable vendor or a fruit seller who conveniently delivers the daily needs at the doorstep." This observation of Kuldip Singh atmosphere of the street vendors in India. They are not "intruders". But key backers of the country.

Indian Constitutional law has been recognized as a fundamental right to have a professional and any legal job to every citizen as a means of life. The Constitution guarantees certain rights and also puts reasonable restrictions to preserve a democratic society. By concluding this work the reader might find answers to the following questions:-

1. Is the life of a poor street vendor so protected?
2. They do not take to stealing or crime nor do they beg for a living. All they want is to live a life of dignity. Then also why do they need to rely on bribery as a way of life?
3. How can an egalitarian society come into existence?

PART -II

Preamble

"A constitution, if it's out of touch with the peoples life, aims and aspiration it becomes rather empty; if it falls behind those aims, it drags the people down.it should be something ahead to keep people's eyes and minds up to a certain high mark"¹. The unwavering breakthrough demeanor of the constitution is the bastion for the citizen to bring forth the green of democracy, liberty, and justice. As sentinel of democracy which called the Constitution of India should look at the window of people drawn from all walks of life. Preamble of the constitution itself declared "to secure all its citizen: Justice, Social, economic and political "², the constitution should be read profoundly in the light of

¹ Jawaharlal Nehru

² Preamble of Indian constitution

the preamble. As mentioned in Kesavananda Bharati case³, noble vision of constitutional principles is draped in the preamble itself.”the preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble”⁴. Justice,Liberty,Equality are the three pertinent principles enshrined in the preamble. Being that there might be a couple of precarious thinking which led to shaking the brain how all these principles should come into reality especially in countries like India which are covered with a number of cultures and creeds. India filled with different cultures, rituals and creeds besides actual views of unity in diversity could be seen on the ground of India.

To secure its citizens Justice, Social, economic and political and equality of status and opportunity the state shall provide more consideration to people who are carrying on their business in the street as hawkers. An egalitarian society will come into being when the state protects the rights of those hawkers and others. It’s really called justice as what has been said in the preamble.

Constitutional Law: Aided to Street Vendors

The farmers of the Indian constitution have insight gained prodigious experience from discussing all the known constitutions of the world. The constitution which we have now is well codified. It’s the key to open closed doors and to find light from darkness. Bedrock of the Indian Internal and External legal actions are enshrined in the constitution of India. In India, the light of the constitution, it gives street vendors rights and it allows the state to make statues related to street vendors. The significant constitutional rights of street vendors can be classified into two.

1. Fundamental Rights

- *Article 14 :-*

Article 14 of the Constitution deals with equality.

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”⁵ The article directly stated that, in the eyes of law everyone is equal regardless of his colour, religion, social rank, or monetary standing. So, to have a egalitarian society the vendors should also be treated in equal status and they will be protected by the law of the country

³ AIR 1973 SC 1461

⁴ Kesavananda Bharati v.State of Kerala,AIR 1973 SC 1461

⁵ Constitution of India ,Article 14

without any discrimination. However The Supreme Court of India has underlined the doctrine of reasonable classification-which is not against Equality- in the case of Western U.P. Electric Power and Supply Corporation Limited V. State of Uttar Pradesh⁶. Says that:

“Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification” .This classification must not be on the basis of colour and likewise. Different needs of different classes of person might require different treatment and classification that gives special protection to certain classes of citizens.Hawkers are a class in a society who need special protection and provision to ameliorate their status.

- *Article 19(1)(g) :-*

In sodan Singh v. New Delhi Municipal Corporation⁷ The court held that :“The right to carry on trade or business mentioned in Article 19 (1) (g) of the constitution, on street pavements, if properly regulated, cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use.”

As mentioned hawkers have the right to carry on their business as mentioned in Article 19(1)(g) of the Constitution⁸.This is also not an absolute right that hawkers can't carry their business without limits. There should be some reasonable restrictions as mentioned in Article 19(6) of the Constitution⁹. For a prosperous society and the well-being of citizens such rights as Article 19 (1)(g) should be needed. Without having reasonable restrictions it might lead to havoc in public. There are certain restrictions held by the court that are demarcated as “Restricted vending zone”. Delineating that Hawking is not allowed near the hospital. To make a conducive environment if the roads are rigid, not enough to manage traffic, then also hawking shall be prohibited. And in the case of Maharashtra Ekta Hawkers Union vs Municipal Corporation, Greater¹⁰(In this case the court put forward a couple of rules regarding street vendors) The honorable court held that hawking shouldn't

⁶ 1970 AIR 21, 1969 SCR (3) 865

⁷ 1989 (4) SCC 155

⁸ Right to practice any profession or to carry on any occupation, trade or business.

⁹ Ground for reasonable Restrictions are :

1. In the interests of the general public.

2. State prescribed qualifications for carrying on any profession or technical occupation.

3. State-run trade, business, industry, or service that excludes the participation of citizens or others either completely or partially.

¹⁰ Appeal (Civil) 4156-4157 of 2002

be permitted within 100 meters from any place of educational institutions and general hospitals.

- Article 21:-

The word livelihood is derived from “life-lode” which means “way of life”¹¹. The capacity to acquire necessities to satisfy and to get a calm life is the way of interpretation of this Article.

In India Street vendors are being worked to look after their families, to feed them, to care for the family. So unreasonable evictions are an infringement of fundamental rights as mentioned in the article. In the case of *Olga Telis & Ors v. Bombay Municipal Council*¹² the court underlined the same thing.

2. Directive Principle

Article 38(1) of Constitution -DPSP- directly states that the state should exert to promote the welfare of the people by securing a social order added to Article 38(1), Article 38(2) specially directs to ‘minimize the inequalities in income status, facilities and opportunities.’ By stating Article 39(a) the state has the duty formulate policy to ensure that citizens, men and women equally, have the right to an adequate means of livelihood. According to this articles state must endeavor to equilibrate the means of livelihood citizens by adopting reasonable laws and restriction if needed. “Right to work” as mentioned in Article 41 of the constitution also makes a conducive environment to hawkers¹³.

The state should evaluate the friendly and thorny aspects of every matter that affects citizens and should point to the bright side of the citizen. The restrictions adopted by the state might be bitter at first sight but later it will assist to reap what we intended at utmost.

However the laws are shown the lights of gems to hawkers. The mentioned articles gives hawkers the right to carry on their business if they give the green light of reasonable restriction and obeyed the laws as mentioned in the acts. An egalitarian society which is a part of real democracy would not come into being if the state shows bias.

Laws that restrict street vending

There are a few laws that restrict street workers to carry on their business.in a direct sense the

¹¹ Hensleigh Wedgwood, Transaction of the Philological Society, 1855.

¹² 1986 AIR 180,1985, SCR Supl.(2)51

¹³ The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

following sections shall aid to maintain public decency and order. However these laws intention is friendly not thorny. But it will effect hawkers to carry their business in footpath especially where traffic block is expecting. Looking that sense this will restrict some rights of street vendors.

Hands of human authorities are adding fire and trying to torture street vendors by arguing “your work is against law” some authorities may add more words as, “You want to get rid of from this rope, should give something to me that make smile in my face”, to take some benefits from them. By the misinterpretation of the authorities the laws as following seems as restriction of hawkers to carry on their business.

- *Section 201 of Motor Vehicles Act, 1988 :-*

The section is stated about Penalty for causing obstruction to free flow of traffic.

“Whoever keeps a disabled vehicle on any public place, in such a manner, so as to cause impediment to the free flow of traffic, shall be liable for penalty up to fifty rupees per hour, so long as it remains in that position: Provided that the vehicle involved in accidents shall be liable for penalty only from the time of completion of inspection formalities under the law”¹⁴. And *Section 283 of the Indian penal code 1860* underlined punishment for those who make obstruction in a public way. “ Danger or obstruction in public way or line of navigation.—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.”¹⁵

- *Section 34 of the police Act 1861:-*

This section reads as follows:

Punishment for certain offenses on roads, etc.-- Any person who, on any road or in any 4 open place or] street or thoroughfare within the limits of any town to which this section shall be specially extended by the State Government, commits any of the following offenses, to the obstructions inconvenience. The act gives police the authority to remove street vendors even where street vending is permitted by the Municipality. This empowers the police to provide punishment for certain offenses occurring on the road. In current scenario police and other authorities are-not often- punishing and torturing them by justifying this section of the act in an unreasonable way.

¹⁴ Motor Vehicles Act, 1988 (not completely written) Section 201

¹⁵ *Indian penal code 1860, Section 283*

There are certain reasonable restrictions enshrined in Article 19(6) of Indian constitution law.

Role of Judicial: How should a conducive Environment rise?

On Street vendors the state has different views, what does it mean and is it a right? If it's a right then what type of right is this? Etc... To answer all those questions, interference of the court is necessary. Concerns related to hawkers have been raised in court.

In the case of *Bombay Hawker Union vs Bombay Municipal Corporation*¹⁶ the Supreme Court has upheld for the first time the right to livelihood of the Street vendors. Unreasonable restrictions and conditions cannot be imposed on hawkers also were held in this case. The court says:-

“The public streets are not only by their very nomenclature but also by their definition is exclusively meant for the use of the general public in our Country. It is important to note that they are not laid to facilitate the carrying on of private business but it is equally important that if hawkers were to be conceded the right claimed by them they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralyzing all civic life. This is the one side of the picture where on the other hand if proper regulations are made according to the exigency of the circumstances, the small traders on the sidewalk of the pavement can considerably add to the comfort and convenience to the general public by making available ordinary articles of everyday use for a comparatively lesser price. Thus an ordinary person who is not very affluent and hurrying towards his home after day's work can pick up these day to day articles without going out of his way to find a regular market. Thus it can be safely concluded that if the circumstances are appropriate then a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, there shall be no objection for carrying on the business”

In *Gonda Ram VS Municipal Corporation of Delhi* case also the court adjudicate same Case of *Sodhan Sing VS New Delhi Municipal Corporation*¹⁷ was highly discussed in the serenity of Street vendors. In the case Singh, a vendor in New Delhi's Janpat area was frequently evicted and his goods confiscated. Through a public interest litigation he appealed to the Supreme Court claiming that the action violated his fundamental rights, especially his right to carry on business or trade that of Article

¹⁶ 1985 AIR 1206, 1985 SCR Supl. (1) 849

¹⁷ 1989 AIR 1988, 1989 SCR (3)1038

19(1)(g) of the Constitution of India. Honourable Supreme Court ruled that :-

“If properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after a day’s work can pick up these articles without going out of his way to find a regular market. **The right to carry on trade or business mentioned in Article 19(1) (g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use**”¹⁸. In this case many aspects of the Street vendors have been discussed. In the case of *Gainda Ram vs Municipal Corporation of Delhi*, in 2010 the court held that “state town vending committees should be appointed to regulate street vending and ensure that they are allotted proper public space”. The contradictions among laws should be decreased. The cases as this help utmostly to get rid of such problems of law. The right of the commuters and pedestrians to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). Conflict of these two rights must be harmonized and regulated by subjecting them to reasonable restrictions only under a law. The laws are also born from courts.

Statutes and Aids relating to Street vendors

Natural Policy on Urban Street Vendors Act 2004, Natural Policy on Urban Street Vendors Act 2009, The street Vendors, The street vendors(Protection of livelihood and Regulation of street vending) Bill 2012, The street vendors (Protection of lives hood and Regulation of street vendors) Act 2014.

Protection of livelihood and a clean condition in public and streets are pertinent and it aids street vendors a lot to look forward to in the way of means of life. All four of these acts are related to the rights and regulation of street vendors in India. The National Policy on Urban Street Vendors Act 2004 and the National Policy on Urban Street Vendors Act 2009 establish guidelines for the management and regulation of street vending in urban areas. These two acts were a reason to have wider debates and public disputes. National policy, 2009 have been introduced in three categories known “Restriction -free Zones”, “Restricted Vending Zones”, and “No - vending Zones”.

¹⁸ *Sodhan Sing VS New Delhi Municipal Corporation, para 16*

The street vendors(Protection of livelihood and Regulation of street vending)Bill 2012 deals with the “Rights and Obligations of street Vendors”.The most focused pointed section of this act Section 12 and section 13 which grant substantive right to the street vendors. Section 14- section 17 mandates certain duties.

Section 12 says:-

“ (1) Every street vendor shall have right to carry on the business of street vending activities in the vending zones allotted to him in accordance with the terms and conditions mentioned in the certificate of vending and the scheme framed by the appropriate Government.

(2) Notwithstanding anything contained in sub-section (1), where any area or space, as the case may be, has been earmarked as no-vending zone, no street vendor shall carry out any vending activities in that zone.”¹⁹

Section 14 to section 17 of the act mandates certain duties as to maintain public hygiene in vending zones and to maintain civic amenities which are defined in the act.

Section 15:- “Every street vendor shall maintain cleanliness and public hygiene in the vending zones and the adjoining areas.”

Section 16:-

“Every street vendor shall maintain civic amenities and public property in the vending zone in good condition and not damage or destroy or cause any damage or destruction to the same.”

Section 17:-

“Every street vendor shall pay such periodic maintenance charges for the civic amenities and facilities provided in the vending zones as may be determined by the local authority.”²⁰

The Street Vendors (Protection of Livelihoods and Regulation of Street Vending) Act 2014 provides for the protection of the rights of street vendors, including the right to livelihood and the right to be protected from harassment and eviction. This act has helped more in recognizing the rights of the hawkers from “encroachers” to “key backers of the country”.

Section 12 - 16 of this Act underlines that the street vendors have profound right to carry on the

¹⁹ The street vendors(Protection of livelihood and Regulation of street vending)Bill 2012 ,sec 12

²⁰ The street vendors(Protection of livelihood and Regulation of street vending)Bill 2012,sec 15,16,17

business. Legality and Legitimacy of street vending have also a part of this act .Section 22 - 26 of Chapter VII mentioned “*Town Vending Committee*” and this committee has to carry out functions relevant to vendors. “*Plan for street vending*” (Second Schedule of the Act),” *Prevention of Harassment*” (chapter VIII)and “*Redressal Mechanism*”(Chapter V) are other main features of the act. Redressal Mechanism allows - if preferred- street vendors to appeal to a local authority.

Overall, these acts aim to protect the rights and livelihoods of street vendors while also ensuring that they operate in a regulated and safe manner within urban areas.

Now Street vendors have special schemes financially and non-financially. positive attempts by providing “*promotional measures*” like access to “credit” and “insurance facilities” through self-regulated structures are the tokens of change.

PART - III

Predicaments of Hawkers in India

“a State arose out of the association of human beings. No one is self-sufficing but all have many wants, and many persons are needed to supply them: one takes a helper for one purpose and another for another, and when these partners and helpers are gathered together in one habitation, the body of inhabitants is termed a State”. Such partners “exchange with one another, one gives and another receives, under the idea that the exchange will be for their good.”²¹

Street vendors in India have been faced many hindrances in this path of means of their livelihood.They were not criminals. Then also de facto the sad reality is that they need to rely on bribery as a way of living. Have they got an outpouring of support from the Government? Is the government endeavoring to solve the problem of hawkers? It’s difficult to sum up in a positive way. Following are the crucial challenges faced by Street vendors.

- Eviction

In India Street vendors have been decimated from their means of life by the district or municipal

²¹ Plato, Republic

administration. The inimical behavior of police also often led them to be upset. In fact, numerous hawkers were

- Intricate Rules

The vendors have to deal with different laws which are more complicated and deal with multiple authorities such as municipal corporations, district administration, and local panchayats. De facto this leads to exploitation. The bias and political influence shown by authorities result in huge losses to poor street vendors. They even can't have an opportunity to get a license.

- Competition

Street vendors are involved in a vibrant competition with other street vendors. Especially in an area filled with hawkers the graph of competition should be doubled.

- Public space

The demarcation of zones limited the space of hawkers to carry on their business. Deo fact the categorization of zones is adequate but the implementation was steeped in bias. This habit of accountability must be avoided.

- Accountability of authorities

Giving bribes is a hunting problem of hawkers. Even if they are not doing crimes and heinous actions the authorities burden them to pay money in a illegal. But, the same thing does not apply to those who have a hand in politics. Such type illegal discrimination must be reduced.

- Not protected by Government

Oftenly street vendors are not protected by governments. Even, labour unions by any labour laws are not doing such a thing to aid street vendors. A few actions to make happiness latter deceptively upsetting them is the fact.

- Sanitation and workplace security.

In many states in India, the Hawker zone is barely dirty.

- Insecure due to low income

Irregular employment and sale fluctuations are leading them to low income. That will affect their means of livelihood.

There are various schemes run by the government for street vendors as “*SVANidhi Scheme*”²² which was launched to benefit over 50 lakh street vendors who had been vending in urban areas. This scheme like this should help hawkers to put their foot forward. But now also there is more lacuna in implementing such a scheme into reality. Politicians are deceptively playing games which make them get more money. Gaps should be filled and a Pellucid minded politician should come into being to get other beings more comfort.

What are the changes needed?

- The state should be a active listener :-

As Mahatma Gandhi remarked “Evolution of democracy is not possible if we are not prepared to hear the other side “the state must listen to hawkers and know what are their concerns and predicaments. Being an active listener itself wipes out many issues of street vendors. To ease this method it would be better if there is a committee in every state to listen and to mark concerns.

Street vendors should have a voice in decision-making processes that affect their lives and livelihoods. Their participation in local governance bodies, such as town planning committees or vendor associations, can help address their concerns and ensure their interests are considered. To make awareness about this every village committee should support hawkers.

- Family license :-

As per the current law there is not a facility to have “family license” but only “Individual license”. Historic aspects of India showed the real history of hawkers who have been decimated from their homeland. State should provide a “family license”.

- Hawking zone ::-

As above mentioned the court classified the footpaths into two. Hawking zone and non-hawking

²² The Ministry of Housing and Urban Affairs (MoHUA) has launched Pradhan Mantri Street Vendor's Atma Nirbhar Nidhi (PM SVANidhi), in 1 June 2020 for providing affordable loans to street vendors

zone. Hawking zones should be strategically located near commercial centers and transportation hubs to enhance business opportunities. Accountability of authorities in demarcating zones should be reduced.

- Act should be strengthened :-

Street vending ought to be legally recognized and protected to provide street vendors with a secure environment to carry on their business. Implementation of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, should be strengthened across all states.

- Formalization and Registration:-

Current scenario hawkers have stepped in trouble as the process of registration. So, a streamlined process for registering street vendors shall be established. This would enable street vendors to obtain licenses or permits, ensuring their legal status, protection from harassment, and access to social security schemes.

- Infrastructure and Amenities:-

The Street vendors bill 2012 have more emphasis on cleanliness of hawkers. As that of ,infrastructure and amenities, such as well-maintained vending stalls, access to clean water, sanitation facilities, waste management systems, and electricity, should be provided in vending zones to improve the working conditions and hygiene standards for street vendors.

- Skill Development:-

Skill training programme to be made available to the vendors. Skill based programme should be implemented to enhance the entrepreneurial and business skills of street vendors. It will help to come up with new ideas which aid to have a dreamt livelihood.

- Support for Sustainable Practices:-

Encouraging sustainable practices among street vendors, such as promoting eco-friendly packaging, waste reduction, and use of renewable energy sources, can contribute to environmental conservation and enhance the image of street vending as a responsible and environmentally conscious trade.

These concepts should be implemented in a manner as the law prescribed which balances the needs of street vendors with the interests of the commuters and urban development goals.

Conclusion

The state has recognized street vendors from “encroachers” to “representative cultural capital”. Local authorities, urban planners, policymakers, and civil society organizations should work together to create an enabling environment for street vendors, ensuring their economic and social well-being while maintaining the order and aesthetics of public spaces. Raising public awareness about the importance of street vendors and their contributions to the local economy can help a positive perception and support for street vending.

Merely putting the statues, laws and plans in place may not be enough. Bias, Accountability of public authority as of all things should be reduced. An egalitarian society will come into being only when a law works with people by keeping all values and principles enshrined in the preamble of the constitution.

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