

# Contextualising Urban Livelihoods: Street Vending in India

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## The Politics of Occupying Public Space

Unprecedentedly in the history of urban political expression, the Edinburgh City Council on 24<sup>th</sup> November, 2011 formally voted to recognise the Occupation of St. Andrew Square, in the city's historic financial quarter, in a motion put forward by Green candidate Maggie Chapman. The capital's city council recognised *“the aims of the ‘Occupy’ movements throughout the world and understands that they are an attempt to redirect economic decisions to be more orientated toward the poor and disenfranchised which is a sentiment the Council endorses.”*

The recent spontaneous democratic peoples' movements in the Arab world began with protests on, and occupation of, public squares in cities (some reports suggest that the Arab Spring in Tunisia was sparked by the self-immolation of a street-vendor protesting harassment by governmental officials). The European economic crisis over the past few years has seen public protests in streets, parks, universities and parliaments across major European cities. Anna Hazare's anti-corruption crusade in India captured the world's imagination through public protests in public spaces across India's cities – all beamed 24x7 to television sets across India and the world. Amongst the unfortunate victims of the 7<sup>th</sup> September 2011 Delhi High Court bomb blast were street vendors demanding judicial protection of their livelihood rights on the streets. These seemingly disconnected events, on closer examination, reveal themselves to be the anticipatable consequences of a mode of thinking that the eminent economist E.F. Schumacher has described as one of the most fateful errors of our age – the belief that 'the problem of production' has been solved.<sup>1</sup> Though then largely unnoticed by Western economists, the Indian visionary Mohandas Karamchand Gandhi had stated much the same proposition by pointing out that the question of 'how much should a person consume?' could be correctly answered only by appreciating that the world had enough for everybody's needs but not for everybody's greed.<sup>2</sup>

Street vendors – and the mode of production and consumption that their livelihood constitutes and represents - are ubiquitous in every city across the world today precisely because the problem of production has not truly been solved. Street vending – a phenomenon as ancient as urban settlement itself – represents in many ways the modest (and less belligerently confrontational) fore-runner to the occupy movements that grip our cities today. As India ushers in an era of foreign investment in retail trade, a critical examination of the context of street vending in India enables an appreciation of deeper theoretical issues concerning culture, citizenship, commodification, consumption, public space, social movements, and constitutional fairness.<sup>3</sup> While this essay focuses on an admittedly eclectic range of themes and categories of analysis, the hope is that the reader is nonetheless left with a sense of what is at stake in ongoing discussions on market reforms and urban street vending in India.

## The Street: Motif, Locale, Ideologeme, and Grid

Streets, markets, highways, parks, lakes, public libraries, and other common property resources are highly contested spaces for various end uses. A city's urban plan, collective and individual moral outlook, laws, and norms effectively prioritise some claims while de-legitimising others through complex clusters of adjudication mechanisms and legal iteration/regulation. The probabilistic demand paths of persons in the city, and the natural but highly variable propensity of private free enterprise and welfarist state systems in responding to the spatio-temporal variety of such demand, results in a

significant amount of planning, mapping and monitoring complexity. This also creates difficulty in iterating and interpreting regulations (including legislations, rules, guidelines, directives, notifications, departmental orders, etc.) and contracts, and introduces a certain amount of uncertainty into adjudication of rival contentions as regards the proposed or actual use of the common property in question. The informal economy of street trade presents a compelling challenge to standard assumptions implicit in economic decision-taking, governmental policy and legal iteration. At the core of the uncertainty is an ambiguous moral decision that involves recognising, as 'legitimate', the satisfaction of certain rights arising from informal legal relations of street trade (including, amongst others, the right to livelihood, the right to use of public commons, the right to affordable essential goods, the right to safety, the right to trade, the right to dignity). The moral ambiguity usually arises due to competing claims of macro-level economic efficiency and fairness, health, safety, security, aesthetic preference, city planning, etc. The uncertainty often results from a sceptical philosophical perspective or an intellectual laziness that posits the impossibility of any city effectively planning for all possible private acts that might manifest on common city resources. Another major source of this uncertainty is deliberate, a consequence of the state and city planner's vision of legibility and simplification that directly affect any attempt at simple text/map-based regulation, adjudication or resolution of non-text/map flesh and blood transactions on city commons. Calvino's words from *Invisible Cities* express one facet of this social fact particularly well: "No one, wise Kublai, knows better than you that the city must never be confused with the words that describe it."

Private acts that are socially valuable by direct intention – such as philanthropic initiatives for needy persons or the community as a whole – seldom pose a major moral, utilitarian, regulatory, or adjudicatory complexity. The question of whether and to what extent the public commons may be used for commercial or “purely private” transactions is more nuanced – and clarity on this aspect becomes critical to creating and interpreting city laws, in shaping the normative attitudes of officials and individual legal subjects, and in conditioning the use of discretion in balancing competing interests for the “greater good” of the community.

The street is where the state that seeks legibility of all its citizens and each of their transactions meets persistent resistance and insurmountable practical challenges in realising its vision. James Scott's monumental classic *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* analyses diverse failures in high-modern, authoritarian state planning – collectivisation in Russia, the building of Brasilia, compulsory *ujamaa* villages in Tanzania, Le Corbusier's grand vision of urban order, Lenin's Russia, etc. – and concludes that “[c]ollectivized command economies virtually everywhere have limped along thanks to the often desperate improvisation of an informal economy wholly outside its schemata.”<sup>4</sup> Scott cautions against relying on the case against high modernism to blindly rush to an ostensibly optimal invisible hand scenario of markets by pointing out that the “market is itself an instituted, formal system of coordination, despite the elbow room that it provides to its participants, and it is therefore similarly dependent on a larger system of social relations which its own calculus does not acknowledge and which it can neither create nor maintain.” The larger system of social relations that Scott mentions refers to elements of contract and property law, the state's coercive power to enforce these laws, and “antecedent patterns and norms of social trust, community, and cooperation, without which market exchange is inconceivable.” In all modern cities, the nonconforming informal practice is an indispensable condition for formal order. In all modern nation states, the economy is “a subsystem of a finite and nongrowing eco-system,” whose “carrying capacity and interactions it must respect as a condition of its persistence.”<sup>5</sup> This fragile, often invisibilised, relationship between the street economy and the street (and city) eco-system suffers when state activities and state officials insist on treating people on the streets according to inadequately nuanced,

high-modernism influenced schemata. The economic plan, city plan, development plan, city map, survey map, zonal map, record of ownership, kiosk license, market vending license, fixed cart license, zone management plan, classification of religion or caste or ethnicity, arrest record, map of political boundaries, etc. constitute the synoptic data that the state uses for its miniaturised legibility and simplification schemata of the city streets.

The street is where a marriage procession spontaneously celebrates a union. The street is where the unlicensed street food vendor meets extreme police brutality as she returns home after a long day's work. The street is where public demonstrations, traffic breakdowns, cycling critical mass demonstrations, carnivals, dinner-time shopping, snack urges, traffic offences, festival celebrations, crimes, prostitution, religious celebrations, public nationalisms, gang-rapes, and a whole host of other infinitely varying activities create the component parts of the city street ethos. Sartre's assertion that ideas cannot digest reality seems particularly true of the city planners' simplification of the street in most cities. This disjunction between ideas and reality asserts its salient mischief through the violence that is enacted on bodies, livelihoods and lives connected to the informal street economy or ecosystem. Kropotkin's conviction that we cannot legislate for the future notwithstanding, it is possible to make a convincing case that planning for our streets in our cities should espouse institutions that are powerfully shaped by practical knowledge and local customs, what Scott describes as *metis*. Such *metis* friendly institutions would be multi-functional, plastic, diverse, and adaptable.

The politics of rapidly modernising risk societies that promote, tolerate or suppress street trade in (urban) city contexts involve a whole host of value considerations – these include health, taste, novelty, variety, aesthetic impact, economic impact, affordability, convenience, locational value, religious restrictions, caste norms, traditional appropriateness, positive and negative externalities including impact on public order, street congestion and city crime, impact on migration and population, transport complementarity, impact on tourism, enterprise capacity, employment generation, relevant spatial preferences and limitations, heritage conservation, sustainability, etc. Any nuanced and appropriate moral, legal or political outlook must also take note of the rural, local, national and international assemblages that city street trades are implicated within.

### **Street Vending: Practices, Effects and Attitudes**

Street vending varies greatly in scale, timing, location, remuneration; it varies in terms of workforce, and types of goods and services.<sup>6</sup> Bromley's global review of street vending provides a useful summary of the major arguments that are frequently used to justify and to oppose the continuation and proliferation of street vending.

The eleven major arguments in support of street vending include: 1) Street vendors contribute directly to the overall level of economic activity, and to the provision of goods and services; 2) Citizens have constitutional rights to choose their occupations and to engage in entrepreneurial activities; 3) Street vending is an actual or potential source of government tax revenues; 4) Street vending serves as a social safety-net; 5) Street vending is a laboratory for entrepreneurship, family business and social interaction; 6) Street vending provides entrepreneurial opportunities to people who cannot afford to buy or rent fixed premises; 7) Street vendors greatly expand the range of places and times where goods and services can be provided, and sometimes they also offer goods and services which are not available in off-street locations; 8) Street vendors bring life to dull streets; 9) Because of its low capital requirements and its potential mobility, street vending is a very effective way to cater for seasonal, sporadic and special demands; 10) Street vending offers its workers considerable flexibility in hours

and levels of activity and; 11) Street vending is a remarkable example of self-help and grass-roots initiative.<sup>7</sup>

The sixteen major arguments commonly used against street vending may be summarised as: 1) Street vendors are not evenly spread across the city. They concentrate very heavily in a few locations, and those locations are typically the points with the highest levels of pedestrian and vehicular congestion; 2) By contributing to vehicular and pedestrian congestion, street vendors may cause traffic accidents, increase the levels of vehicle-generated air pollution, and impede the flow of police, fire, ambulance and other emergency vehicles; 3) Street vending reduces the number of routes available to motor vehicles, it impedes door-to-door deliveries and collections, and it may create access problems for emergency vehicles; 4) Street vendors may block the routes of egress from crowded buildings like theaters, stadiums and department stores, increasing the scale of the tragedy in the event of a major fire, explosion, toxic gas escape or mass hysteria; 5) Street vendors can and often do “forestall” off-street businesses, attracting potential purchasers as they walk into a concentration of on- and off-street business activity; 6) Street vendors often fail to give receipts and keep accounts, to pay taxes on their earnings, and to charge sales or value added taxes to their customers; 7) Because they can leave or relocate their businesses more easily, street vendors have greater opportunity to swindle their customers and avoid official regulation than vendors in fixed retail establishments; 8) Street vendors of food and drink pose major public health problems; 9) Street vendors may be less professional, committed and responsible than off-street vendors; 10) Street vendors often include substantial numbers of minors; 11) A small minority of street vendors engage in such highly disreputable and often illegal trades as ticket-touting, pimping, prostitution, and the retailing of narcotics; 12) Street vendors contribute to the underground economy of undocumented cash transactions, not only through their sales, but also through the bribes they are often required to pay to police and municipal inspectors; 13) Through the activity and congestion that they generate, street vendors provide opportunities for pick-pocketing, snatch thefts and armed assaults; 14) Some pedestrians and many motorists are disturbed, irritated and even frightened by street vendors’ solicitations; 15) Street vendors are often considered unsightly, they may generate a lot of noise with their announcements, and they and their customers often leave garbage on the streets; 16) In orthodox Marxist visions, street vendors are viewed as the epitome of surplus labor and underemployment, inserting additional middlemen into marketing chains, promoting superfluous consumption, and supporting a petty capitalist, competitive ethic.<sup>8</sup>

The significance of the different arguments varies considerably from country to country, from city to city, and in accordance with the specific characteristics of the vendor, merchandise and neighborhood under analysis. Significantly, the most heated debates on street vending concern ‘conflict-zones’ of agglomeration or hyper-agglomeration (usually less than five percent of the urban area and including the central business district, various neighbourhood and suburban commercial centres, the major sports and entertainment centres, tourist attractions, religious sites, monuments, etc.). Consequently, each argument (whether for or against street vending) deserves careful empirical study within the context of its applicability before flexible, adaptable, experimenting, and multiple-governance models of regulation may be put in place.

### **Street Vending in India: Practices, Policies and Laws**

While reliable statistics are particularly hard to come by, street vendors are estimated at around 2 % to 2.5 % of the population of major Indian cities. In terms of total numbers, there are an estimated 10 million or more street vendors in India (and an estimated 350,000-500,000 in New Delhi alone).<sup>9</sup> Tiwari points out that the road environment design and nature of road traffic in Indian cities (including

pedestrians, bicycles, animal-driven carts, non-motorised rickshaws, etc) imply both that street vendors are inevitable and that such street trade serves a very real and otherwise largely un-fulfilled demand.<sup>10</sup> In general, street vendors earn very meager wages (estimated as usually between Rs. 40 to Rs. 80 per day) – therefore, it would be accurate to generalise that most street vendors are desperately poor relative to their counterparts in the formal segment of the economy.<sup>11</sup> Rough estimates suggest that women constitute 30 % of the total population of vendors in India and that they earn significantly lower incomes than their male counterparts.<sup>12</sup> Most studies indicate that a majority of street vendors in Indian cities are unlicensed and therefore officially treated as illegal.<sup>13</sup> Correspondingly, most studies note that a significant proportion of street vendor earnings (estimates suggest between 20% – 30%) are taken as bribes by the authorities.

Recent news reports suggest that a national legislation – the Street Vendors (Livelihood Protection and Regulation of Street Vending) Act, 2013 – will be passed in the current session of Parliament.<sup>14</sup> The Union Minister of Housing and Urban Poverty Ajay Maken has urged that no vendor should be evicted and displaced until the Street Vendors Livelihood Protection Act comes into effect, while also opining that self-employed street vendors have equal stakes in projects of development and democracy, and that a city cannot become inclusive and vibrant unless it integrates the working poor in city development planning.<sup>15</sup>

The increased momentum behind a national street vendor legislation traces back to October 2010 when a Division bench of the Supreme Court of India (Justice G.S. Singhvi and Justice A.K. Ganguly) in *Gainda Ram v. MCD* reiterated that the right to street vending was a fundamental right protected under Article 19(1)(g) of the Constitution of India.<sup>16</sup> Significantly, the Supreme Court in *Gainda Ram v. MCD* also held that this right could be reasonably restricted only through a law (and not through governmental/municipal schemes), and therefore mandated that legislation be enacted by the appropriate Government by 30<sup>th</sup> June, 2011.<sup>17</sup> It should be noted that this decision was the latest development in a long series of judicial pronouncements spanning over five decades where the Supreme Court had considered the legal status of street vending and the precise contours of the rights implicated in the phenomenon of street vending and its governmental regulation.<sup>18</sup> As long back as 1954, the Supreme Court of India had held that though all public streets and roads in India vest with the State, the State holds them as trustees on behalf of the public.<sup>19</sup> The decision of the Madras High Court in *M. A. Pal Mohammed v. R. K. Sadarangani* represents a singularly sophisticated judicial treatment of the rights of street vendors in cities when balanced with the rights of other citizens and users of public streets.<sup>20</sup> Curiously enough, in this case, the current Union Minister for Finance, P. Chidambaram (then a rising lawyer at the Madras High Court) represented the shop-keepers of Netaji Subhash Chandra Bose Road and Rattan Bazaar in Chennai in their (eventually unsuccessful) case against the street vendors.

The constitutional position in India, briefly summarised, seems to be that street vending is an enforceable fundamental right under Article 19(1)(g); this right is however subject to existing or new laws that impose “*in the interests of the general public, reasonable restrictions on the exercise of the right*” or that specify “*the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.*” While a detailed analysis is not possible here, further constitutional guidance relevant to informality, street vending and the operation of the economic system may be sourced in provisions including the Preamble, Articles 14, 19, 21, 38, 39, 39-A, 41, 42, 43, 43-A, 47, 48-A, 243-P to 243-ZG (read with the 12<sup>th</sup> Schedule), 265, 276, 301, 302; entries 1,2, 5, 6, 8, 26, 27, 28, 49, 52, 56, 60 of List-II (State List); and entries 2, 3, 15, 18, 20, 21, 22, 23, 24, 26, 33, 33-A, 34, and 43 of List-III (Concurrent List) of the Constitution of India.

It should also be noted that India is a party to several international agreements relevant to the regulation of street vending including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), over forty two International Labour Organisation (ILO) Conventions that (should) influence executive and judicial interpretation and have an enforceable effect when there is a lacuna in the domestic law on the point.<sup>21</sup>

While the Ministry of Housing and Urban Poverty Alleviation had prepared a Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill in 2009, the actual restrictions on the fundamental right to street vending are found in a wide variety of municipal, state and national laws and schemes (including police laws, health laws, food safety laws, public order laws, town planning laws, traffic laws, etc.) that vary from municipality to municipality, city to city, and state to state.<sup>22</sup> Despite some positive efforts in cities like Bhubaneswar and Imphal, street vendors continue to face often insurmountable difficulties in procuring a license from corrupt, defunct or insensitive state authorities. Street vendors also face a constant threat of over-enthusiastically enforced, outdated regulations that threaten their livelihood, dignity, profitability, etc. or position them away from the natural markets where they would otherwise tend to be positioned.<sup>23</sup>

The government policy pertaining to urban street vending is rarely followed in spirit and many governmental authorities remain unaware of their basic obligations as required by these policy prescriptions. The National Policy on Urban Street Vendors, 2009 revises and updates the older 2004 National Policy on Urban Street Vendors.<sup>24</sup> While both policy documents recognise the importance of national markets, and explicitly state that street vending provides meaningful employment and valuable products and services to a wide range of persons, the 2009 policy documents marks several advancements over the older 2004 policy. While the 2004 policy considers spatial planning norms strictly in terms of vending zones and non-vending zones, the 2009 policy advocates free-vending zones, restricted-vending zones, and no-vending zones. Second, the 2009 policy clarifies the three different types of street vendors (stationary, peripatetic, and mobile), and provides much needed detail and clarity as regards policy imperatives pertaining to peripatetic and mobile vendors. Third, the 2009 policy introduces much-needed clarity on the principles for determining quantitative norms for street vendors through the introduction of “holding capacity” terminology. Fourth, while the 2004 policy was decidedly unclear on licensing and its relation to vendor registration, the 2009 policy clarifies that licensing pertains to site/space allotment for stationary vendors whereas registration applies to all kinds of vendors. Fifth, the 2009 policy greatly clarifies the provisions in the 2004 policy as regards the composition, duties and functions of the Town Vending Committees. Finally, the 2009 policy clarifies the uncertainty relating to ‘planning authority’ terminology in the 2004 policy through the use of the carefully defined term ‘local authorities’. Apart from these changes, the 2009 policy considerably improves upon the 2004 policy on a number of related other areas: provision of civic facilities, registration procedures, registration fees, collection of revenue, eviction, relocation, confiscation, organisation of vendors, participative processes, public health and hygiene, self-regulation, credit and insurance, rehabilitation of child vendors, education and skill development, housing, social security, monitoring and review, dispute settlement, and capacity building.

Policy prescriptions and laws will need to effectively respond to the reality of a large urban street vending sector, in rapidly-expanding, high-population, economically heterogeneous, constitutionally competitive, urban centres with site-specific spatial, transport and cultural/aesthetic geographies, and

where street vending has been long prevalent and is only likely to increase in frequency, distribution and scale of operation. Integrating street vending into city development planning and urban laws in India will certainly not be an easy task.

One of the major challenges that the forthcoming national legislation on street vending will face is in ensuring that fundamental rights are adequately and equally protected across the country even as context-specific, citizen-driven and democratic urban functionality proliferates in shaping our cities. In this context, Jane Jacobs' now classic 1961 work urges us to understand streets and sidewalks by how they actually function rather than for their intended use.<sup>25</sup> Her identification of street vendors (amongst others) as the 'eyes on the street' - who due to their long and continuous presence on the streets are capable of preventing harm, detecting wrongs, and providing immediate help when needed - has most recently found support in the JS Verma committee's recommendations relating to how the Indian state should counter the menace of rape. Another major challenge for the national street vending legislation will be to ensure that formalising street vending does not simply result in greater surveillance, greater harassment, and increased bribe-seeking - all of which would simply encourage street vendors to transgress, evade and undermine the applicable (legal and spatial) regulatory frameworks.<sup>26</sup> Other challenges will involve the fair rationing and allocation of limited 'high-value' space, appropriately incentivising street vendors to genuinely formalise their livelihood practices, the norms for identification and *de facto* maintenance of no-vending and restricted-vending zones, the competence and integrity of decentralised administrative mechanisms for implementation, and finally, the difficult task of harmonising street vending laws with other laws (relating to crime, public order, transport, city planning, etc.). I conclude by briefly sketching an understanding of dialectical urbanism that the forthcoming national legislation, related policy, and implementing agencies should recognise and accommodate.

### **Accommodating a Benjaminian Dialectical Urbanism**

On the Parisians' technique of inhabiting their streets: "*Returning by the Rue Saint-Honore, we met with an eloquent example of that Parisian street industry which can make use of anything. Men were at work repairing the pavement and laying pipeline, and, as a result in the middle of the street there was an area which was blocked off but which was embanked and covered with stones. On this spot street vendors had immediately installed themselves, and five or six were selling writing implements and notebooks, cutlery, lampshades, garters, embroidered collars, and all sorts of trinkets. Even a dealer in secondhand goods had opened a branch office here and was displaying on the stones his bric-a-brac of old cups, plates, glasses, and so forth, so that business was profiting, instead of suffering, from the brief disturbance. They are simply wizards at making a virtue of necessity.*" Adolf Stahr, *Nach funf Jahren* (Oldenburg, 1857), vol. 1, p. 29.

Seventy years later, I had the same experience at the corner of the Boulevard Saint-Germain and the Boulevard Raspail. Parisians make the street an interior.

– Walter Benjamin, *The Arcades Project*, trans. Howard Eileen and Kevin McLaughlin (Cambridge, MA: Harvard University Press, 1999), p. 421.

The above extract highlights how entrepreneurial vision, confidence in improvisational abilities, and the mobile nature of some street vendors created a profitable economic opportunity that the city administrators of Paris had probably not anticipated in their cadastral mapping of the city and their planning of its boulevards, public parks, shopping areas, etc. It also suggests that despite careful spatial planning, context-specific enterprise and necessity will often determine what happens at a particular time in a particular street within a modern city. Finally, the above extract suggests that some urban

practices are recurrent despite technological, administrative and culture changes. The complex relationship between structure and agency in a modern city - between the arcades (passages) and the dreams/dispositions/embedded practices of agents who 'interiorize' the arcades of Paris – is prominently highlighted throughout Benjamin's *The Arcades Project*. The dialectic of spatial domination (through administrative planning) and collaborative improvisational 'interiorization' of urban spaces (through practices such as dwelling, suffering, improvising, etc.) is what, in Benjamin's account, results in the emergence of a situated, empirico-structurally embedded, collective street life. Joseph D. Lewandowski argues that Benjamin's dialectical urbanism is unique given that it illuminates “*how the modern city can be both an administratively structured ‘objective’ site or force-field of planned relations and a reflexively structuring ‘subjective’ space of collective dwelling, improvising, appropriating, dreaming, innovating, struggling and transforming.*”<sup>27</sup> Lewandowski points out that insofar as Benjamin's dialectical urbanism suggests that the modern city is also the site of the emergence of new and innovative forms of social/city life that have the potential to transform their own structural context, it differs from the dominant quasi-functionalist German sociological discussions of urbanism and urbanisation (for example, the work of Friedrich Engels and Georg Simmels explain urbanism as the liquidation of collective ways of life under the imperatives of industrial capitalism) and the more recent analytic conceptions of the agent as a free-floating, empirically disembedded actor whose rational discourse transcends the location in which it is situated (for example, the work of Jurgen Habermas stresses on context-transcendent norms of validity claims). A Benjaminian sociological understanding of urbanism holds particularly true for Indian cities – an empirical investigation and a sensitive appreciation of the unique ways in which urban spaces in India are interiorized will undoubtedly help law and developmental policy better calibrate the relationship between urban spatial planning and livelihood-related articulations of citizenship.

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## ENDNOTES

<sup>1</sup> EF Schumacher, *Small is Beautiful: A Study of Economics as if People Mattered*, 1973.

<sup>2</sup> For Gandhi, “*the distinguishing characteristic of modern civilization is an indefinite multiplicity of wants,*” whereas ancient civilizations were marked by an “*imperative restriction upon, and a strict regulating of, these wants.*” See “Choice Before Us”, *Young India*, 2 June 1927, *Collected Works of Mahatma Gandhi*, vol. 33, pp. 417-18.

<sup>3</sup> “[S]treet vending as a lens through which to explore several theoretical issues: 1) the ways in which culture-power-difference are mutually shaped and reconfigured in the public sphere; 2) how shifting from political-economy analyses to cultural politics analysis within the context of governance yields insights into activism and emerging conceptualizations of public space and citizenship; 3) the questioning of commodified cultural identities that go beyond simple touristic consumption practices; and 4) a clearer understanding how street vendors participate in social movements that are part of



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larger transnational political and economic forces.” See Street Economies, Politics, and Social Movements in the Urban Global South, Advanced Seminar, March 13–17, 2011, available at [http://sarweb.org/?advanced\\_seminar\\_street\\_economies](http://sarweb.org/?advanced_seminar_street_economies)

<sup>4</sup> James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, 1998, p. 351 [hereafter Scott].

<sup>5</sup> Herman E Daly, “Policies for Sustainable Development”, paper presented at the program in Agrarian Studies, Yale University, New Haven, February 9, 1996, p. 4, cited from Scott, p. 351.

<sup>6</sup> “Over the centuries and across the world, street vending has been practiced in many different ways. Most vendors sell goods, but some sell services, and some sell a mixture of the two. Some vendors are fixed in one location, using a kiosk or a heavy stall which remains in the same location for months or even years and is locked up and left under the supervision of a watchman when not in use. Others use heavy mobile stalls which are pushed from a storehouse into the sales position at the beginning of the working day, and pushed back at the end. Still others are fixed in location, but simply lay their merchandise out on the ground or on a sheet of cloth or plastic. Truly mobile vendors may push stalls on wheels, carry their merchandise on their persons, or operate a stall off a cart, a tricycle, or a motor vehicle. Some mobile vendors sell to passers-by, some do door-to-door delivery, and still others hawk from building to building.... Street vending may be practiced full-time, part-time, seasonally or occasionally. It can be fixed, occasionally mobile, or almost continuously mobile, and it can go on at any or all times of the day and night. The firms involved can range from one-person micro-enterprises, through numerous forms of partnership and family business, up to franchisees, pieceworkers and wagedworkers of larger off-street businesses. Some street vendors are branch operations of off-street stores, sometimes right outside the store, at other times some distance away. Other street vendors create their own branch operations, dividing their merchandise and sending some of it with a relative, partner or employee to sell at another location..... Most street operations are much smaller in scale than fixed stores or supermarkets in off-street locations, but a few are quite substantial, ranging from truck-borne mobile stores, to big fixed stalls and kiosks in strategic high-demand locations. The income distribution of street vendors is highly skewed, with a few making quite high incomes, comparable to those of successful storekeepers and career professionals, and most making relatively low incomes, comparable to those of unskilled manual laborers.” See Ray Bromley, “Street Vending and Public Policy: A Global Review”, *International Journal of Sociology and Social Policy*, Vol. 20, No. 1/ 2, 2000, pp. 2-3 [hereafter Bromley].

<sup>7</sup> *Ibid.*, Bromley, at pp. 5-6.

<sup>8</sup> *Ibid.*, Bromley, at pp. 9-10.

<sup>9</sup> Sharit K Bhowmik, “Street Vendors in Asia: A Review”, *Economic & Political Weekly*, May-June 2005, at p. 2256; Sharit Bhowmik (Ed.), *Street Vendors in the Global Urban Economy*, 2010, at pp. 21, 25.

<sup>10</sup> Geetam Tiwari, “Encroachers or service providers?”, Seminar, 491, July, 2000.

<sup>11</sup> See Sharit K Bhowmik, *Hawkers in the Urban Informal Sector: A Study of Street Vending in Seven Cities of India*, NASVI, 2000; SNDT Women’s University and ILO, *Study of Street Vendors in*

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Mumbai, 1999; RN Sharma, *Census of Hawkers on BMC Lands*, Tata Institute of Social Sciences, Mumbai, 1998.

<sup>12</sup> Sharit K Bhowmik (Ed.), *Street Vendors in the Global Urban Economy*, 2010, at p. 27.

<sup>13</sup> In Mumbai, the municipality has not issued a new street vending license since 1978, as a result of which nearly all of the 200,000 to 300,000 street vendors in Mumbai are illegal. See Sharit K Bhowmik, “A Raw Deal?”, *Seminar*, 491, July, 2000.

<sup>14</sup> “Street Vendors Bill will be passed in current session: Maken”, *The Hindu*, March 14, 2013, New Delhi.

<sup>15</sup> *Id.*

<sup>16</sup> *Gainda Ram v. MCD*, (2010) 10 SCC 175, at paragraph 77. The fundamental right of street vendors to carry on business on public streets under Article 19(1)(g) of the Constitution of India had been articulated by the Supreme Court in earlier decisions including *Saudan Singh v. NDMC*, (1992) 2 SCC 458; *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155; *Bombay Hawkers Union v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

<sup>17</sup> *Gainda Ram v. MCD*, (2010) 10 SCC 175, at paragraphs 77, 78.

<sup>18</sup> See *Pyare Lal v. New Delhi Municipal Committee*, AIR 1968 SC 133; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *Bombay Hawkers Union v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *MCD v. Gurnam Kaur*, (1989) 1 SCC 101; *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155; *Saudan Singh v. NDMC*, (1992) 2 SCC 458; *Ahmedabad Municipal Corporation v. Nawab Khan*, (1996) 11 SCC 123; *Gainda Ram v. MCD*, (1998) 1 SCC 188; *Romesh Chander v. Imtiaz Khan*, (1998) 4 SCC 760; *Sarojini Nagar Market Shopkeepers Assoc. v. NDMC*, (2000); *Navi Mumbai Municipal Corporation v. Navi Mumbai Hawkers and Workers Union*, (2002) 10 SCC 369; *Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai*, AIR 2004 SC 416; *Sudhir Madan v. MCD*, (2007) 7 SCR 1; *Patri Vyapar Mandal Delhi v. MCD Town Hall*, (2009) 12 SCC 475.

<sup>19</sup> *Saghir Ahmad v. State of UP*, AIR 1954 SC 728, which referred to and approved the law on this point as contained in an earlier decision of the Madras High Court in *G. S. S. Motor Service v. State of Madras*, 19521 2 M. L. J. 894. The law on this point as recognized in *Saghir Ahmad v. State of UP* was subsequently relied upon by Justice Sharma of the Supreme Court in *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155.

<sup>20</sup> AIR 1984 Mad. 32. Paragraph 30 of Justice Sathiadev’s judgment states: “*It is claimed by shop-owners that this trade is a public nuisance. Hawker trade, so long as it is regulated in a proper manner by concerned public authorities, could never be a public nuisance. Rather, general public by and large, are not only attracted by this type of trade, but look forward to it for more than one reason. Shorn of mounting overheads which assume alarming proportions when goods are sold in sophisticated shops, the same type of goods are sold for reasonable prices with less percentage of profit. Even traders and manufacturers look to hawker trade to dispose of their accumulated stocks, which they cannot sell,*

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*because either the design is not in vogue or the demand for such type of goods no longer exists, or due to rejection of goods by foreign buyers they could not be exported but still of good quality etc. Furthermore, when vegetables, fruits, flowers are required, general public invariably look forward to a hawker rather than go in for such stuff in shops, which are unreasonably expensive. The economic condition of people is such that they look forward to hawkers, who alone could sell for lesser price, the type of goods carrying a quality which would suffice their needs and aspirations. Quite often the shop owner, before whose shop the hawker is trading, depends on him for clearance of his accumulated stock, for a small margin he may earn. Even a shop owner who complains about the existence of hawkers, as he returns home buys his other household requirements from these hawkers. In many leading cities in the world on certain days in a week, the vehicular traffic in the earmarked street is prohibited, and hawkers congregate, and public in large numbers gather to buy their requirements. Hence it is not as if this type of trade is found only in India. It could never be characterised as an illegal or unethical trade. Mainly because public authorities have failed to regulate their locations, it has resulted in a grievance being made by shop-owners, as if it is a trade that should be excluded. If regulatory measures are introduced, bearing in mind the requirements of the public of free access, public hygiene, public safety and the like, they can also prosper and the general public thereby be benefited. If specific plots are allotted and they are confined to those portions, there could be no conceivable objection for such a lawful trade to be carried out, particularly when it would provide an honest livelihood for those who have meagre capital but have a keen desire to carry on a trade. Once regulatory measures are introduced, it could never be a public nuisance.” This insightful decision has been referred to in *Sodan Singh v. New Delhi Municipal Committee*, where the Supreme Court of India held that “if properly regulated according to the exigency of the circumstances, the small traders on the side-walks 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.” See (1989) 4 SCC 155.*

<sup>21</sup> For greater detail on international human rights norms relevant to protection of street vendors in India, see Transnational Development Clinic – Jerome N. Frank Legal Services Organization, Working Paper – Developing National Street Vendor Legislation in India: A Comparative Study of Street Vending Regulation, Yale Law School, January 2011, pp. 11-12.

<sup>22</sup> For an overview of some of the municipal, city and state level laws applicable to street vending, see Sharit K Bhowmik, *Hawkers in the Urban Informal Sector: A Study of Street Vending in Seven Cities of India*, NASVI, 2000. See also, Shalini Sinha and Sally Roeber, *India’s National Policy on Urban Street Vendors*, Urban Policies Briefing Note. 4, WIEGO, April 2011.

<sup>23</sup> See AS Abhigna, *Different Ideas for Licensing Street Vendors – Especially in Old Indian Cities*, CCS Working Paper No. 235, 2010; Shalini Sinha and Sally Roeber, *India’s National Policy on Urban Street Vendors*, Urban Policies Briefing Note. 4, WIEGO, April 2011.

<sup>24</sup> See Ministry of Housing and Urban Poverty Alleviation, *National Policy on Urban Street Vendors 2009*, New Delhi, India, 2009; Ministry of Housing and Urban Poverty Alleviation, *National Policy on Urban Street Vendors 2004*, New Delhi, India, 2004. For useful overviews, see Shalini Sinha and Sally

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Roever, India's National Policy on Urban Street Vendors, Urban Policies Briefing Note. 4, WIEGO, April 2011; Cheryl Deutsch, Implementing the National Policy on Urban Street Vendors: A State-by-State Status Report, YUVA, May 2009; Final Report of the National Workshop on Debating the National Policy on Urban Street Vendors: A Trans-City Interrogation, Urban Research and Policy Programme, National Institute of Advanced Studies, Bangalore, August 13, 2012.

<sup>25</sup> Jane Jacobs, *The Death and Life of Great American Cities*, 1961.

<sup>26</sup> On this point, see Paul Stoller, *Money Has No Smell: The Africanization of New York City*, 2002; Arvind Rajagopal, "The Violence of Commodity Aesthetics: Hawkers, Demolition Raids, and a New Regime of Consumption", *Social Text*, 19(3): 91 – 113; Jonathan Shapiro Anjaria, "The Politics of Illegality: Mumbai Hawkers, Public Space and the Everyday Life of the Law" in Sharit Bhowmik (Ed.), *Street Vendors in the Global Urban Economy*, 2010, pp. 69 – 86.

<sup>27</sup> Joseph D. Lewandowski, "Street culture – the dialectic of urbanism in Walter Benjamin's *Passagenwerk*", *Philosophy and Social Criticism* 31 (3): 293 – 308 (2005).