

Regulatory Framework and Behavioural Issues in the Informal Khokhas' Markets in Pakistan

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Khokha (Kiosk) is a major part of informal markets and is widely observed across the globe and in Pakistan. Khokhas are one of the major sources of market-based poverty alleviation and absorb a significant number of labour force. However, on average Khokhas in Pakistan are in shabby states, which arise a question about its regulatory framework. Whether any regulatory framework of Khokhas prevails in Pakistan and to what extent it facilitates or hinders entry. To find an answer to these questions, we collect data from secondary and primary sources and find that, there exists no legal framework to obtain a license for establishing Khokhas in Pakistan. People set up a Khokha with a constant fear of demolition, fines, confiscation, and arrest. We also find that the harassment of current vendors from public authorities is a major behavioural barrier for prospective entrants. Based on the other countries' best practices, we propose a detailed set of policies for creating a formal legal framework for khokhas across Pakistan.

JEL Classification: D52, J46, K4

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1. INTRODUCTION

Economic prosperity requires the creation of new wealth, which is possible if there are efficient markets. One of the prerequisites for efficient markets is low barriers to entry including legal barriers. A market with a high level of restrictions discourages new entries and thus keeps the competitive level limited, leading to efficiency loss (Labaj, et al. 2017). The debate on how to keep markets competitive dates back to the 14th century when Ibn-e-Khaldoon wrote down the principles of competitive markets in his book '*Al-Muqaddimah*'. Ibn-e-Khaldoon was a proponent of free markets, and he was against governments participating in markets, as doing so will drop competition in markets. He suggested that government should provide secure and accessible markets for trade.

New entries to markets are possible with differentiated as well as homogenous products. Some entrepreneurs enter markets with the introduction of diversified and differentiated products, while others with products that are similar and identical to the existing ones. In both cases, businesses may face various entry barriers and multiple risks, including financial risks, depreciation risks, and damage risks. In his seminal book, Shepherd (1979) discussed how entry barriers decrease the scope and speed of new entrants into the markets, while the entry of new firms is a source of competition and functional markets (You,1995). Per the literature on industrial organisation, the presence of entry

barriers gives the incumbent firms an inherent advantage over the potential new entrants, enabling the incumbent firms to generate above-normal profits (Yip, 1982). Therefore, it is important to know the barriers to entry, in particular legal barriers, for bringing efficiency and optimal allocation of resources.

It is pertinent to mention that markets are of two types, i.e., formal, and informal. Formal markets are those in which starting a business requires fulfilling strict legal conditions apart from the requirements such as the availability of funds and willingness to take the risk. On the other hand, informal markets are those in which an entrant, on average, does not need to pass through stringent conditions of the formal markets. Although there exist some rules for entering the informal markets, the level of details and fulfilment of legal conditions are much lower than in the formal markets. Informal markets are a major source of growth and employment in developing countries, including Pakistan. It provides employment opportunities for the less privileged as well as affordable goods and services for the low-income segment of society.

Khokhas (temporary stalls and street vendors) are a major part of the informal markets in every country, including Pakistan. Khokhas enhance the shopping experiences of city dwellers as well as tourists. The vibrant tourist markets around the world, especially in Thailand, Malaysia, Vietnam, and Singapore mostly consist of temporary stalls. These temporary stalls provide opportunities for poor entrepreneurs, students, and small craftsmen to sell their goods. The khokhas are set up on various street corners across all cities in Pakistan. However, the shabby look and structure of such khokhas raise a question about the regulatory framework. Due to the weak legal framework, the owners of such stalls work under the risk of expulsion (Haque, 2019). This research aims to examine whether any regulatory framework prevails for establishing khokhas in Pakistan and to what extent such regulatory framework, if any, is hostile or conducive to entry into Khokha markets.

The issue of market accessibility is significant for policymakers as the entry of new small firms indicates economic growth and market efficiency. Literature provides support for the positive relationship between entrepreneurial activities and macroeconomic growth (Van Stel, et al. 2005; Acs and Storey, 2004). On the other hand, entry barriers are a sign of economic disadvantages for many (Barrett, 2008; Bloom, et al. 2003) and such economic disadvantage may lead to a poverty trap (Barbier, 2010). Identification of entry barriers to the market is of significance as policy decisions are built upon them. This paper helps in the identification of such hurdles for small entrepreneurs in the form of Khokhas' owners as owners of large firms have the potential and resources for lobbying with the policy-makers to achieve desired policy decisions.

2. LITERATURE REVIEW

Street vending is an interdisciplinary subject and has been studied not only from the lens of economics (Bhowmik & Saha, 2013) but also from the perspectives of anthropology (Barthelmes, 2015), sociology (Vargas, 2016), urban planning (Sung, 2011), geography (Turner & Oswin, 2015), development studies (Nirathron, 2006), and gender studies (Cohen, 2010). The primary reason is the importance of street vending in terms of providing earning opportunities for the urban poor and cheap food for the lower middle class. Per FAO (2007) report more than 2.5 billion people across the world eat street food

every day. Street food is a source of affordable calorie intake for many individuals in the low-income strata of developing countries. In Thailand, street food is very famous. Nirathon (2006) showed that between 1990 and 1998 monthly household expenditure on food items decreased from 76 percent to 50 percent and expenditure on outside food increased significantly. This study also showed that half of the consumers purchased street food once a day. The study found that dinner was the most frequently bought meal and 70 percent of respondents quoted timesaving and convenience as the main reasons for eating street food.

The major issue street vendors face is harassment from public authorities such as police and municipal officials. This behaviour is rampant across Asia. As street vendors are perceived to be illegally occupying public space, they suffer from police harassment and racketeers, who charge fees for protecting officials (Hiemstra, et al. 2006). Agnello and Moller (2004) found that in Cambodia, harassment from police and market security was the major complaint by street vendors. The harassment ranges from the confiscation of items, prohibition of vending, or collection of undue taxes. The street vendors were paying various taxes, such as sanitation fees, umbrella rent, space rent, security fees, and many other taxes, collected by the people of local authorities in the municipality, police, and district administration. Although the payable tax for street vendors is specified in the Cambodian Tax book, the fees are not specified anywhere. Thus, officials find a loophole and indulge in fuzzy tax collection, stemming from the unclear legal status of street vendors.

Street vendors in Thailand also face harassment from various tiers of authorities. Wongtada (2014) explained that vendors are allowed to operate at particular times and in specific zones. The law also directs the vendors to have visible identification and appropriate dress. Vendors are responsible for cleaning their area of work. The officials under the command of the governor as well as local officials are authorised to determine the status of vending activities and amend rules and regulations. The traffic department can also prohibit the vendors if they deem vendors to be obstructing the road traffic. Thus, street vendors can be subjected to punishment by the governor's officials, local officials, and police officials.

Corruption and bribery are also widespread across global street markets. Cohen, et al. (2000) stated that bribes to public officials are so prevalent that there is a global vocabulary for bribes. In Nepal, this bribery is known as "private fees for public space". In other countries, some call it "speed money", some refer to this as "routine offerings" or "dog feed", and some call it a "friendship fund". Bribery takes away a portion of vendors' daily income and ranges from as low as 3-4 percent in Chennai, India, and Yokohama, Japan to 6 to 8 percent in Colombo, Sri Lanka, and Bangkok, Thailand (Cohen, 2010).

In Pakistan, PIDE (2020) shows that hawkers in Karachi pay between PKR 700 to 1,000 in the form of bribes to government officials. It includes police, municipality officials, and local development authorities. In the Saddar market of Karachi alone, the street hawkers pay PKR 67 million per annum to the officials in the form of bribery. It was found that 12,000 hawkers at Mumbai railway stations pay up to USD 2,400 per month in bribes to railway officials (Cohen, et al. 2000). Hence, this rent-seeking takes the form of an informal tax on the informal economy.

We also find studies, that have worked on barriers related to the growth of small formal firms in Pakistan. For example, Aftab and Rahim (1989) examine barriers to SMEs' growth and

identified the socio-economic background of the firms' owners as the largest hurdle in acquiring market skills. Afraz, et al. (2013) found that a lack of credit facilities, human resources, and raw materials are major barriers to SMEs' growth. Similarly, Hussain, et al. (2012) found corruption and rent-seeking as major impediments to growth for small firms in Punjab. World Bank Enterprise Analysis Unit and the Investment Climate Assessment (ICA) Survey (2007) found that the shortage of electricity and gas is the biggest impediment faced by the existing firms in the market. William, Shahid, and Martinez (2014) explore the factors which determine the decision of entrepreneurs related to switching from formal markets to informal status. Similarly, Khawaja and Iqbal (2019) studied the factors which lead to the expansion of small formal and informal firms in Pakistan. They provided details of various factors that contribute to the expansion of these businesses.

To our knowledge, research on the regulatory framework of Khokha in the context of Pakistan is missing. This study fills this gap and adds to the current available pool of literature by examining whether any regulatory framework prevails for establishing khokhas in Pakistan and to what extent such regulatory framework, if any, is hostile or conducive to entry into Khokha markets.

3. DATA AND RESEARCH METHODOLOGY

This is a qualitative study for which data is collected from primary and secondary sources. We studied documents related to the legal framework of Khokhas and organised sitting with people in regulatory departments, such as developmental and municipal authorities, local administration, police, lawyers, representatives of khokhas' organisations and local bodies, etc. Primary data was collected in five cities of Pakistan, i.e., Islamabad, Rawalpindi, Peshawar, Lahore, and Mingora, Swat in summer 2021. 10 detailed in-depth interviews were conducted from Khokha owners in each city (11 in Rawalpindi) by using a well-structured questionnaire, making the total observations to be 51. The markets in each city were selected based on the population of khokhas to ensure heterogeneity across the city. The respondents included vendors on footpaths, parks, streets, outside the shops, parking lots, and food trucks parked at the corners of roads. We also met some people who ran khokhas in past but left the market, later. We collected data from current khokha owners by visiting them, while those who exit, were interviewed by telephone. We tracked such people while conducting interviews with the existing khokha owners. The process of convenient sampling was used. The reason is that legal issues, on average, are the same and given for all khokha owners and do not change with the change of khokha owners. However, other issues, such as harassment from the current khokha owners, depend on the location of khokha owners for which we tried to include khokha owners from different locations. All interviews were recorded and transcribed, later. We mainly interviewed fixed-khokhas owners except for a mobile food truck. Fixed vendors mainly face legal issues such as confiscation at the time of eviction drives, while mobile vendors have the chance to leave the location when such drives start.

4. RESULTS

4.1. Legal Framework of Khokha in the Cities

In this section, we provide the legal framework for khokhas in the cities where we conducted our research. In this regard, we met relevant authorities. For example, we met

Tehsil Municipal Officer in Mingora, Swat, and his staff. We submitted a request for the provision of a copy of the framework that regulates khokhas. We were told that there is no proper documentation for the regulations of khokha in Mingora, Swat. In addition, there is no proper procedure for licensing and all temporary stalls in various parts of the city are not per law. However, due to political repercussions, they avoid taking legal action against all such setups. The staff in the municipality directed us to the local government act available on the website for more details. However, there is no discussion related to khokhas in this act.¹ Per our knowledge, there is also no proper legislation for the operation of the khokhas in Peshawar, Rawalpindi, and Lahore. However, we found some legal documents related to the khokhas in Islamabad. Apart from Islamabad, none of the city development authorities/local governments have formulated any policies/laws regarding the legal structure of khokhas. Hence, we present a detailed description of the legal framework for khokhas in Islamabad.²

4.1.1. *Historical Overview of the Legal Framework for Khokhas in Islamabad*

Islamabad is the only city in Pakistan that has issued licenses for temporary structures on green belts/sidewalks, generally known as khokhas/dhabas/rehri-walas. According to the legal documents, in 1979, the then President of Pakistan, General Zia ul-Haq directed Capital Development Authority (CDA) to issue licenses to small businesses, such as “rehri-walas/khokhas”. On the Presidential directives, dated 31.10.1979, the then Federal Secretary of Housing and Works started the process of issuing licenses to khokha-walas (kiosks owners). Considering the directions of the President of Pakistan, the Planning Wing of CDA framed the policy for the allotment of tea stalls/kiosks in 1986 and earmarked the site for kiosks and the Works Directorate constructed the site and handed it over to the Municipal Administration for further action. The Municipal Administration then used to hand over the Khokhas to private individuals at a nominal rent of around PKR 100. Under the 1986 policy, CDA rationalised the process of issuing licenses to three main khokha categories:

- (a) In developing sectors, as the development of markets took time, temporary khokhas were allowed to be set up as an interim arrangement for the residents of that area.
- (b) Alongside the highways and service roads of sectors, where there were no markets left for the shoppers, small khokhas were allowed for the facilitation of travellers and shoppers.

¹The act is available online on <https://lgkp.gov.pk/wp-content/uploads/2019/06/The-KP-Local-Government-Amendmen-Act-2019.pdf>

²It is pertinent to mention that Pakistan has no legislation (an Act of Parliament) on street vending (khokhas). Therefore, we have no legal definition of a khokha in Pakistan. On the contrary, India has a street vendors act 2014 (Protection of Livelihood and Regulation of Street Vending) which came into force on 1 May 2014. This Street Vendors act defines street vendors or khokhas as “ a person engaged in vending of articles, goods, wares, food items, or merchandise of everyday use or offering services to the general public, in a street, lane, sidewalk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific” Neither Indian law nor any Pakistani regulation defines the size or measurement for the classification of khokhas. Hence, a khokha could be only a cart (rehri) or a temporary stall that could have an area of 5 sq. ft. or 100 sq. ft. Khokhas have a temporary built-up structure and mostly operate on a street, sidewalk, public park, parking lot or a public place. It could operate on state land for free or on private land for rent.

- (c) In parks and recreational places, small khokhas were allowed to be constructed for providing drinks and snacks to visitors.³

4.1.2. Issuance of Licenses and Imposition of Ban

From 1986 to 1992, CDA issued 646 licenses for running temporary khokhas at different locations in Islamabad against a nominal fee. In 1994, CDA stopped receiving the fee and demolished the khokhas, especially in the area where embassies were located and other sensitive locations citing them as a security risk. In 2009, the Khokha Association met with the chairman of the CDA, for the restoration of 646 khokhas. Due to this effort, a survey was carried out by the CDA along with the representatives of the Khokha Association and found 250 khokhas owners having proper old permissions at different locations in Islamabad. Thus in 2009, by the directions of the then chairman CDA, 250 out of 646 khokhas were restored.⁴ In the same year, the CDA issued new licenses for khokhas taking the total number to 485. Thus, CDA recognised the existence of 250 old khokhas with licenses from 1986 to 1992 and 235 new khokhas with licenses issued in 2009.

The federal government perceived khokhas as a security risk. Therefore, the chairman of the CDA imposed a ban on the new allotment of khokhas on 06-02-2010 and was given approval by the CDA Board on 27.12.2011. This ban on khokhas is still intact. According to the CDA, even the 485 licensed khokhas have ugly and shabby structures, tarnishing the beauty of Islamabad, and are no longer needed. The CDA believes that the khokhas were only allowed to operate when Islamabad was developing and now that all markets of the city are properly functioning, there is no need for temporary stalls, and should be eliminated,⁵ Thus in 2013, CDA decided to cancel all 485 licenses. The Directorate of Municipal Administration issued cancellation notices to all types of license-holders on 01-11-2013. Thereafter, in 2015, the Enforcement Directorate started a grand operation against the kiosks and demolished more than 315 khokhas. As a result, the Khokha Association launched a city-wide protest, held press conferences, and met with the members of the National Assembly and Senate with their demands. The anti-encroachment operation against khokhas started in 2015 and continued from time to time.

4.1.3. The Restoration Process of Khokhas in Islamabad

In 2015, the National Assembly of Pakistan took up the matter of the khokha-demolishing drive and instructed the CDA to reinstate the demolished khokhas in three days. The National Assembly, vide order O.M F12(3)/2015-Com-I, dated 30th December 2015, of the National Assembly Secretariat (Committee Wing), made some recommendations in the context of the meeting of the Senate Standing Committee on 9th November 2015 that CDA may restore the 485 licenses within 03 days.⁶

On the directions of the National Assembly of Pakistan, a resolution was passed by the House of Mayor Metropolitan Corporation Islamabad in the 14th and 15th meetings of

³Lodhi, A. (2019). One Khokha, One Thousand Lives, Soch Writing, available at <https://www.sochwriting.com/one-khokha-one-thousand-lives/>

⁴ Official Documents retrieved from CDA by the authors of this study.

⁵Ibid.

⁶The News (2015). CDA asked to restore licensed kiosks within three days, available at <https://www.thenews.com.pk/print/82842-CDA-asked-to-restore-licensed-kiosks-within-three-days>

Metropolitan Corporation Islamabad on 28-08-2017 and 28-09-2017 regarding the restoration of all the 485 cancelled kiosks, which was principally approved by Mayor Metropolitan Corporation Islamabad. Thereafter, a follow-up meeting was held on 25-05-2018, and the mayor of Islamabad decided to first issue offers letters to 235 licensed khokha owners, with the condition that the khokhas would be of a standard size and design. Formal licenses were to be issued after vetting by Planning Wing CDA.⁷ However, the licenses were never actually restored by the CDA.

Some offerees started their business in the demolished kiosks based on the offer letters issued to them but without the site being vetted by the Planning Wing of the CDA. Therefore, the CDA again demolished such khokhas constructed on green belts.⁸ Between 2015 to 2019, a few of the khokhas kept operating in the city even without any legal status.

In 2019, around 120 licensed khokha owners filed a writ petition in the Islamabad High Court for their legal right to operate the khokhas per their licenses. A single-member bench of the court passed the judgement against the khokhas. The court observed that the CDA or MCI had no right to issue such licenses in the first place and all such licenses were illegal. The court stated that the federal government is the custodian of the Islamabad Master Plan and the allotment of land for khokhas fall under the 'Zoning Regulation & Developing Sector' tier of the Master Plan.⁹

After the dismissal from High Court, the Khokha Association approached the Minister of Interior regarding the appropriate action for kiosk/khokha affectees. On 10-06-2019, the Minister of Interior, of the Government of Pakistan issued directions to the MCI/CDA to provide a brief history of the subject matter to resolve the issues of kiosk/khokha affectees. After several follow-up meetings, the Standing Committee on Interior forwarded the recommendations to the CDA regarding the restoration of kiosks/khokha in Islamabad.

On 09-10-2020 the Planning Wing of the CDA once again presented the summary to the CDA Board regarding "Regulation for earmarking of Temporary Kiosks/ Khokha sites in the Layout Plan 2020". The policy of CDA is narrated as "*After due deliberation, Board observed that a policy regarding the allotment of temporary kiosk/khokha is a preview of the DMA, MCI, while the earmarking of Temporary Kiosk/Khokha sites/area in accordance with Planning Parameter is purely the domain of the CDA, being the custodian of the Islamabad Master Plan. The ownership of Temporary Kiosk/khokha sites will remain with the CDA and these kiosk/khokha/sites are nontransferable. The Board further directed that the Directorate of Municipal Administration MCI would forward each case for the earmarking of sites for Temporary kiosks/khokhas to the Planning Wing, CDA on case-to-case basis. After considering and examining each case, the Planning Wing CDA would earmark Temporary Kiosk/khokha/sites, in accordance with the Planning Parameters and the existing Rules and Regulations*".¹⁰

Thus, as of now, no new licenses of khokhas are being issued and all previously licensed khokhas are deemed cancelled. Any khokha operating even after the cancellation

⁷The Nation (2019). New kiosks allotment plan shelved after CDA, MCI resistance, available at <https://nation.com.pk/05-Sep-2019/new-kiosks-allotment-plan-shelved-after-cda-mci-resistance>.

⁸Interview with Inspector, Directorate Municipal Administration, CDA.

⁹Express Tribune (2019). IHC permits CDA to demolish licensed kiosks in Islamabad, available at <https://tribune.com.pk/story/2005561/ihc-permits-cda-demolish-licensed-kiosks-islamabad>

¹⁰Ibid.

of the license is deemed illegal under the CDA rules. The CDA Board decided to review the restoration of khokhas on case to case basis. However, as of September 2022, there is no information about any progress in this regard by CDA

The CDA claims that the licensing of khokhas is a function conferred to Metropolitan Corporation Islamabad as per Islamabad Local Government Act 2015.¹¹ CDA believes that the issuance of the license to khokhas is further backed by Section 15A of CDA Ordinance, Article 140A of the Constitution of Pakistan, ICT Local Government Act, Section 15A of CDA Ordinance, 1960 read with ICT Municipal Bye-Laws 1979, President of Pakistan's order dated 21st October 1979, Secretary of Housing's decision dated 15th July 1978, National Assembly's direction dated 30th December 2015, CDA's 1986 Policy, and MCI's Resolution dated 28th August 2017.¹²

After the involvement of the Ministry of Interior and National Assembly, the CDA started to lay out new regulations for khokhas in 2020. In the CDA Board meeting of February 2021, new regulations for earmarking the sites for khokhas were presented. However, the CDA Board did not approve the new regulations but rather forwarded them to the MCI for their input. The CDA considers itself the custodian of the state's land, therefore, it believes it has the mandate of earmarking khokha sites while the MCI has the mandate of issuing licenses to individuals based on the Local Government Act 2015.¹³

Islamabad is the only city with some regulatory framework for Khokhas, yet the demolition of licensed khokhas periodically has shattered the confidence of the khokha owners in the law. Well-defined rules and transparency in the implementation of such rules are the only way forward for promoting a vibrant street-vending economy in Islamabad.

4.2. Identification of Legal Barriers Based on Empirical Results

In this section, we provide an analysis of the legal issues based on in-depth interviews. We provide different implications of the absence of a legal framework for Khokha owners.

4.2.1. Legal Status of Khokhas and Harrasment

We found that 42 out of 51 khokhas owners never applied for any kind of permit as shown in Figure 4.2.1. Although there exists no legal cover for khokhas, the purpose of this question was to understand any sort of effort made by the owners to obtain some kind of permission from any relevant authority. Only 4 khokha owners stated that they had obtained a permit of some sort from the administration. However, this permit was not a license, but rather some reference letter from a high-up that could be shown to the city administrators in case of a raid. For instance, a letter from the director general of the Parks Authority stated that the vendor was allowed to park her food truck on the premises of a public park. On the other hand, only 2 khokha owners claimed that due to the backing of

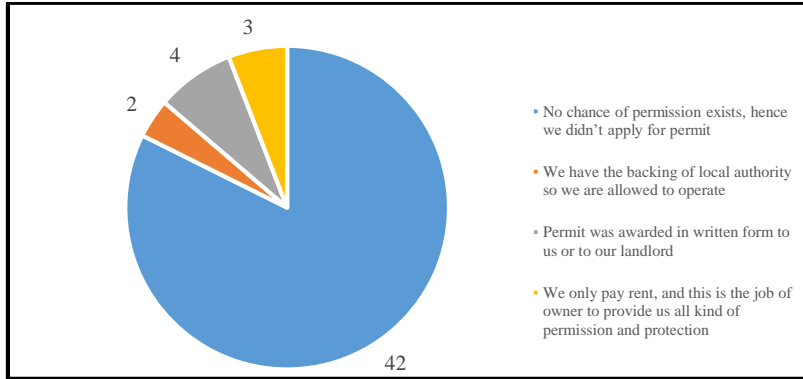
¹¹Islamabad Local Government Act 2015, available at https://na.gov.pk/uploads/documents/1448345650_900.pdf

¹²Business Recorder (2019). SC urged to allow licensed kiosk to continue business, available at <https://www.brecorder.com/news/amp/4724783>

¹³The Nation (2020). Formulation of kiosks' regulation delayed due to non-cooperation of MCI, available at <https://nation.com.pk/14-May-2020/formulation-of-kiosks-regulation-delayed-due-to-non-cooperation-of-mci>

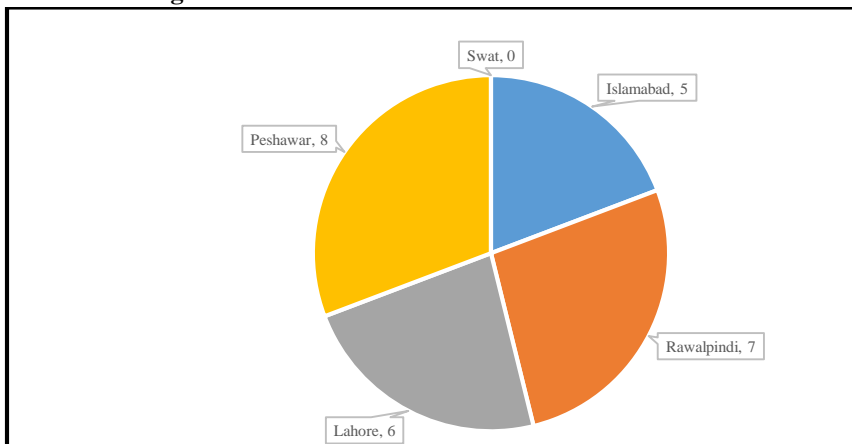
local authorities, they did not require any licensing. Those 3 owners who paid rent were of the view that they were only responsible to pay the rent and the owner of the land was responsible for the legal status of the khokha.

Fig. 4.2.1. The Legal Status of Khokha



As khokhas owners have no legal access to land, thus face harassment from officials of various agencies. We found that khokhas owners in Peshawar complained more about harassment from the administration followed by Rawalpindi. Figure 4.2.2 shows that 8 out of 10 khokhas owners in Peshawar reported regularly harassment by the Cantonment Board officials (Saddar market in Peshawar comes under the jurisdiction of Peshawar Cantonment Board). Similarly, 7 out of 11 khokhas owners in Rawalpindi stated that they were harassed by the Municipal Committee and the Cantonment Board. On the other hand, 5 khokha owners in Islamabad complained about harassment.¹⁴ In Swat, none of the khokha owners made such complaints.

Fig. 4.2.2. Harassment from Local Administration



¹⁴ In Islamabad, we found that khokhas that are run in posh sectors such as F6 and F7 complained more about harassment, whereas the khokhas operating in G8, G9, and Bara Kahu reported less harassment. A major reason behind this as stated by the respondents and a CDA official was that the CDA is more concerned about the face structure of posh sectors as most of the government officials reside in those areas.

4.2.2. Types of Harassment

Confiscation of goods and fines by the city administration were the most common types of harassment faced by khokha owners across four cities. In every city except Swat (whose khokha owners did not complain harassment), confiscation of the goods was the most reported harassment. The municipal administration and cantonment boards raided and damaged the khokha as well as confiscated the goods. While during the returning process, a lot of goods were not returned. Moreover, to take back belongings and stuff, vendors had to pay fines ranging between PKR 1,000 and PKR 2,000.

On average things remained confiscated for two days per month and it resulted in various kinds of losses such as damage of khokha, loss of goods or stolen, no sales during the confiscation period, and legal expenditures on bail (as many vendors get arrested during raids). The khokhas with a large setup had to face losses reaching PKR 100,000–PKR 200,00 as the confiscation or sealing of the khokhas, in some cases, prolonged to a month. Three of the khokha owners estimated the loss for each confiscation ranging between PKR 25,000 to PKR 50,000.

Table 4.2.2 show the estimation of confiscation losses, which include fine payments, legal expenses incurred on bail, goods stolen during confiscations, and the loss of sales during such period. Moreover, as shown in the table, the stuff remained confiscated for on average two days every month. The last row in the table shows that, on average, 17 percent of the monthly revenue generated by the khokhas in Peshawar is consumed on paying bribes and confiscation fines/losses— the highest across five cities. In Islamabad khokhas owners, on average, consume 12 percent of their monthly revenues on bribes and confiscation losses. Such losses in Rawalpindi are 5 percent while for 8 percent for Lahore.

Table 4.2.2

Average Monthly Economic Leakages

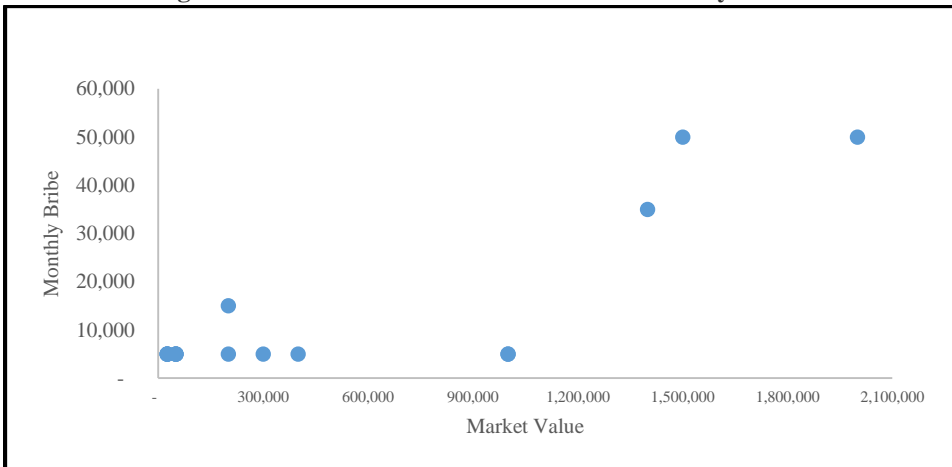
	Islamabad			Rawalpindi			Lahore			Peshawar		
	Min	Max	Avg	Min	Max	Avg	Min	Max	Avg	Min	Max	Avg
Bribe	1,000	50,000	5,500	300	3,000	1,300	1,000	6,000	3,200	2,000	33,000	9,200
Confiscation Loss	10,000	25,000	9,400	3,000	8,000	5,000	4,000	15,000	8,700	1,000	20,000	6,750
Days Stuff Remain Confiscated after a Raid	2	5	3	1	3	2	1	3	2	1	3	2
Monthly Revenue	100,000	500,000	128,000	6,000	20,000	125,000	60,000	300,000	137,000	60,000	200,000	92,000
Monthly Proportion of Avg Revenue Going into Bribe/Losses	–	–	12%	–	–	5%	–	–	8%	–	–	17%

In all four cities, some khokha owners paid cash bribes to the official authorities regularly. In Peshawar, 7 out of 10 khokhas owners told that they paid a monthly bribe of around PKR 5,000. Different ranged prevailed in each city as shown in above table,

however, the number of incidences was lower than Peshawar.¹⁵ In addition, most of the respondents claimed that they did not get any receipt for the fines they paid in cash to the authorities. Some owners of khokhas also paid in-kind bribery. This included free food or free stuff to the traffic police, city police, and/or municipal authorities. The khokha owners in Peshawar faced an additional kind of harassment in the form of arrest. However, they were arrested by the traffic police for the violation of traffic rules and were released after a day when they submitted a fine of around PKR 1,000 to PKR 2,000.

This is pertinent to mention that monthly cash bribes are directly proportional to the market value of the khokha. We found that the market value of a khokha, as stated by the owner, was directly proportional to the monthly bribes they had to pay as shown in Figure 4.2.2. This was true for all cities except Swat. In general, when a khokha had invested a significant amount on the setup or was located at a commercially attractive place, the city administration officials tended to demand higher bribes from them.

Fig. 4.2.2.1 Market Value of Khokha and Monthly Bribes



4.3. Global Best Practices and Policy Recommendations for Pakistan

After a review of laws on street vending in India, the Philippines, Thailand, and some South and North American countries, we are making the following recommendations for designing a comprehensive legal framework for khokhas in Pakistan.¹⁶

Vending Site Selection Authority: Before setting up a khokha, the foremost issue is the selection of a vending site. A few countries such as Peru, India, and the Philippines have established authorities at the market, ward, or zone level for identifying such sites. In

¹⁵ Few khokha owners reported that they were not harassed, because they either operated after working hours or had a setup at locations not frequently visited by the authorities. In the case of Islamabad, a few respondents reported that officials from CDA did not generally raid after office hours. Similarly, some were of the view that they did not bother about non-posh sectors and rarely raided there.

¹⁶ This is pertinent to mention that in November 2020, The Poverty Alleviation and Social Security Division has drafted a bill in collaboration with Pakistan Institute of Development Economics (PIDE) to bring street vending legislation. The main purpose of the bill is to protect the right of street vendors in Pakistan. However, to our knowledge the bill has not yet tabled in the parliament as by September 2022. As the official copy is not available, hence, we will suggest flexibility for incorporating best practices of the world if possible.

Peru, the law defines vending-encouraged, vending-permissible, and no-vending sites. There can also be some flexibility in this regard. For example, in Quito, Ecuador, the law identifies nine locations for vending but allows the Municipal Allocation Committee to permit vending in other sites when it deems it feasible.¹⁷ The Allocation Committee also includes three members from the vending association. In this way, inclusivity is ensured for such decisions. Per our findings, CDA Islamabad believes that since the khokhas damage the natural beauty of Islamabad in some places, it can preserve such places by earmarking them as no-vending zones. The site selection committee should have some representation from the khokha association so that a middle ground can be reached.

Identity Verification: Almost every country with a legal framework for khokhas requires the applicant to be at least 18 years of age, but in some countries, such as the Philippines, it is 21 years. In South Africa, licensing authorities are authorised to obtain the record from the South African police of any conviction of the license applicants.¹⁸ In Pakistan, the eligibility criteria for licenses should be a valid identity card, which should be enough for a background check for anyone who desires to set up a khokha in any city. If someone below the age of 18 wants to set up a khokha, they may be allowed to operate and get it registered on B-Form. This way, there will be a minimum exclusion of common people along with a proper identity check. This will also address fear behind the demolition of khokhas in Islamabad, in past, criminals had entered the khokha business.

Fixed vs. Mobile Vending: Islamabad and Lahore have accepted the concept of food trucks. Such food trucks are very common in New York, Singapore, Bangkok, and other cities of the world. In Buenos Aires, separate permits are issued for mobile and fixed vendors, and each vendor is allowed to hold only one type of permit.¹⁹ In Sao Palo Brazil, there is a separate fee structure for mobile and fixed vendors.²⁰ It is important to legislate whether mobile vendors can operate at any location or should their mobility be restricted to a specific zone. Restrictions on mobile vendors can adversely affect them as they would like to cater to the needs of customers in different areas. However, restricted zones would benefit consumers as they will know where to find their favourite vendors every day. In any case, separate licenses for mobile and fixed vending can be a suitable approach.

Open vs. Restricted Licensing: A major question that arises in any street vending framework is the upper limit on the issuance of licenses. Should there be an unlimited number of vending licenses, or should the number be restricted? If restricted, should the restriction be at the city level or the neighborhood level? For instance, in New York, the City Administrative Code has restricted the total number of food vendor licenses to 2900.²¹ This has resulted in a waiting list of thousands and chances of obtaining a license for a new entrant remain bleak. In Philadelphia, each business neighborhood has its limit of vendors, ranging from three to 100.²² Similarly, Hong Kong and Singapore also have licensing caps. An unlimited number of licenses can create overcrowding in the cities, occupying public spaces and cramping space for pedestrians. Therefore, the legal framework in Pakistan

¹⁷ Reglamento de Quito, *supra* note 65, Art. 7 & 9.

¹⁸ Businesses Act, *supra* note 53, at (2)(5)(a)-(b).

¹⁹ Buenos Aires Ley 1166, *supra* note 94, 11.1.9

²⁰ São Paulo Decreto 33.924, *supra* note 94, at Art. 11, 14.

²¹ Street Vending, available at http://www.nyc.gov/html/sbs/nycbiz/downloads/pdf/educational/sector_guides/street_vending.pdf

²² Philadelphia Code, 9-206(10).

should come up with a reasonable cap on khokha licenses at the start, which should be revised at least once in three years as per the market needs and the number of applicants.

Registration with Health and Tax Departments: Many jurisdictions in Europe and North America require multiple licenses before authorisation of work to street vendors. In New York, a vendor requires two licenses from the Department of Health, a food vending license, and a mobile cart license.²³ Furthermore, all vendors in New York are required to be registered with the sales tax registration authority. This ensures that health and safety practices are being followed and well as the government is not deprived of revenue. As the Federal Board of Revenue (FBR), Pakistan, has also launched a drive to register small businesses with sales tax, the registration of street vendors can also be a beneficial step. However, the government can devise a reduce discounted sales tax policy for the street vendors because of the nature of their customers, who are mostly from lower income stratum.

Transparency and Accountability: The licensing authority should have minimal discretion to grant the licenses. In CDA 1986 policy, a 20 percent quota was under the discretion of the CDA board. Discretion is against the rules of transparency and fairness. In South Africa, business laws state that a license must be granted to the applicant unless they fail to fulfil the requirement.²⁴ However, even in such cases, the authority can deny licenses by changing the requirements from time to time. In some cases, higher discretion can allow flexibility in rules that may result in a greater number of licenses. Therefore, to safeguard the rights of the vendors, the applicants and license holders should be given the right to challenge the verdict of the authority as is the case in South Africa.

Resale and Subletting: In most of the reviewed laws such as that of the Philippines, India, and Thailand, resale and subletting of licenses are strictly prohibited. This prohibition stems from the concept of fairness. Vending space is a scarce resource and should be distributed based on equity. In Islamabad, we found that few licensed khokha owners have subleased the khokha at very high rents, compared to the rent they used to pay to the CDA. In this way, deserving people are exploited. This leads to market inefficiencies. There should be two exemptions allowed in this case. First, in case of death or permanent illness of the licensee, the license should be allowed to be transferred to the spouse or child. Second, the licensee should be allowed to employ a few assistants for help without obtaining any additional license. This will also generate employment. However, as is the case in Ireland, the licensee should be responsible for any violation even if it is committed by the assistant.

Prevention of Monopolisation: Sometimes suppliers use vending licenses to extend their sales. For this purpose, the applicant should not be an employee of his supplier or should not be a registered small business. In Peru, the law prohibits individuals employed by suppliers or small businesses to apply for street vending licenses.²⁵ In New York, in 1995 the city council voted for a 'one person-one permit.'²⁶ Such rules ensure that corporations do not exploit vending licenses by operating

²³ *Sidewalk Standoff: Street Vendor Regulations are Costly, Confusing, and Leave Many Disgruntled*, (2010), p. 2.

²⁴ *Businesses Act*, *supra* note 53, at (2)(4) and (2)(6)(a).

²⁵ Lima Ordenanza 002; Reglamento de Quito, *supra* note 65, art. 12

²⁶ Urban Justice, *Street Vendors Unite! Recommendations for Improving the Regulations on Street Vending in New York City*, at 4, available at <http://www.urbanjustice.org/pdf/publications/VendorsUnite.pdf>.

hundreds of stalls across major locations and paying the bare minimum to their employees. The one-person one-license rule can be practiced in Pakistan as well, to benefit the most deserving individuals.

Provision of Services: The vendors require various services such as (i) solid waste disposal, (ii) toilets for maintaining cleanliness, (iii) electricity, (iv) warehouse and storage, (v) drinking water, and (iv) signages and other facilities. In the Indian Street Vendor Act, all these services are supposed to be provided by the Town Vending Committee. It is important to note that if such services are self-financed from the fees paid by the vendors, vendors would have to pay a higher percentage of their income in fees and taxes. Moreover, it is also important to understand that the provision of services by a national authority may bring uniformity across all areas but services by a local authority can cater to local needs. However, the availability of funds with the local authorities has remained a major bottleneck in Pakistan. In this scenario, the case of Lima, Peru can serve as a good example. In Peru, a part of the fees paid by vendors is invested in a fund and the income is distributed amongst vendors as social security assistance. Further, the decision to use the fees collected from vendors for the provision of services rests with the municipal board, which has members from vendor associations. In this way, the voice of local vendors is also heard in the provision of services and the use of funds.

4. CONCLUSION

Street vending or the khokha business is a part of a vibrant city economy. The street economy is regularised, taxed, and allowed to operate competitively. However, the street economy in Pakistan is discouraged due to the absence of any legal framework. Most of the khokha owners work illegally, because of which they face harassment from the civil administration in the shape of regular raids, forced closures, bribery, and the confiscation of carts and goods. In Pakistan, there is no legislation at the federal or provincial level for the street economy, due to which there exists no mechanism for issuing licenses. This makes the whole street economy unorganised, giving rise to various issues for the local and city administration, such as congestion, traffic jams, and the obstruction of roads sides, and pathways. All entrepreneurs who desire to establish khokhas enter the street economy risking losses in the form of confiscation and bribes. Islamabad is the only city in Pakistan that has framed any policy for khokha owners. However, instead of making such a policy a model for the rest of the country, there is a ban on issuing new licenses since 2011, and even the old licenses have been cancelled. There is a dire need for making regulations related to the street economy so that the ambiguity and uncertainty regarding khokhas may end.

Formalisation of khokhas would mean having a safe and secure location for vending in the city. It would not only mean a registered business, but the city government will also earn fees and taxes. Moreover, entrepreneurs would enjoy basic rights, such as the right to work and the right to earn without harassment and discrimination. Currently, wherever a vendor finds open and free space, they establish a khokha without any proper permission. This creates a threat to the public as well as to vendors. Moreover, such an informal setting facilitates people of underground mafias to grab free spaces. Thus, such places are generally not secure and safe. To provide a secure place for vending, city planners need to identify public spaces for vendors.

There are examples of formalisation in the world where the focus is on imposing costs on street vendors. However, if the vendors do not benefit from formalisation, such formalisation cannot be sustainable over time. It is important to understand the following important points:

- If formalisation implies “moving off the streets” vendors would not earn sufficient income to pay the rent of the stall.
- If formalisation implies “registering the business” or “paying the taxes” vendors would have no reason to be formalised.

An initiative to formalise khokhas should consider the support mechanisms which will help the vendors to sustain income over a long period. This may include legal and secure access to attractive locations, better infrastructure at the vending locations, and effective protection from abuse of authority and harassment.

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