

Eleventh Session of the Open-ended Working Group on Ageing

Substantive Inputs :ACCESS TO JUSTICE

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National Legal Framework

India's Constitution promises equality of law to all citizens, special provisions for advancement of weaker sections, equality of opportunity in matters of public employment, freedom of free movement and protection of life and personal liberty. Article 39A of the Constitution of India states that the state shall provide free legal aid, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These constitutional rights when applied to senior citizens as a defined social group should provide the basis for a national legal framework. Subsequently, India's National Policy for Older Persons 1999 promised government assistance in securing legal aid to elderly persons. However, a national legal framework remains a distant dream. The closest India came was in 2007 when Maintenance and Welfare of Parents and Senior Citizens Act, 2007, created maintenance tribunals where the elderly can approach for various issues relating to their welfare and rights, especially when their children deny them support. However, the Act has not been implemented properly. Chapter V of the Act enjoins the state government to take various measures for protecting the life and property of senior citizens including creating a comprehensive action plan for enforcing rights of the elderly and conferring powers and imposing responsibilities on the District Magistrate to execute the provisions of this Act. The Act creates positions like Maintenance Tribunal, Maintenance Officer, Conciliation Officer, etc, to offer various forms of assistance to elderly persons. The National Human Rights Commission has also intervened for senior citizens on issues of elder abuse and lack of state support. In addition there are also other non-judicial forums like Public Grievance Commission and Information Commission where elderly can make petitions. Despite individual forums at every level there is no framework that is evolving.

Availability

As per Indian criminal code parents cannot be evicted from a house without due process of law if they have been staying there from before. Under section 125 of the CrPC, a magistrate can order a child to maintain his old parents under the Maintenance of Parents Act. Under the Hindu Adoptions and Maintenance Act an aged parent can demand maintenance from children in the same way wife can demand from husband. The Domestic Violence Act provides parents and elderly women with the right to seek relief from any kind of abuse. In rural/ tribal areas, the tribal council or gram sabha or the relevant Panchayat Raj institution are responsible for implementation of the policy. For resolving disputes in micro level the village courts named as Lok Adalat extend the service of justice to the villagers of India. Across India, the respective District Legal Services Authority is enjoined to provide legal aid to indigent

persons in all courts. Their effectiveness and availability varies from place to place. The Maintenance Tribunals also need to be set up at local levels as they offer a cost effective solution to property related legal problems of elder. LokAdalats where cases are disposed of en masse can be organized where litigants are senior citizens. Some states are allowing criminal cases to be filed online. A national helpline number is also taking shape. Doorstep delivery of public service, including by police officers, is gaining currency. However, there is no policy consciousness yet on the difficulties of the elderly in accessing justice or making these available to marginalized people like elderly.

Accessibility

India, has a very strong judiciary system and has a rich tradition of providing justice to the affected in various levels. Now India is putting more legal records, documents and processes online which have the potential to bring judicial recourse to the doorstep. Web conferencing facility for litigants is also slowly being attempted. Precedents of judges going to senior citizens in cases where they are physically unable to access justice have also been reported. There is an emphasis on greater access but elderly will still struggle because technology is not their strong point. Indian laws demand that no person goes unrepresented in a court of law. Free legal aid is available in criminal cases. The main challenge in accessing justice for elderly persons is the huge pendency of cases in courts. Legal processes are also longwinding and take years. Some high courts in India give priority for senior citizens when they write to chief justices demanding expedited hearing of their matters. There are deadlines like six months for disposing of a case. This needs to be the norm and the exception. Registration of senior citizens with the jurisdictional police station is mandated. In many states a model of having NGOs visit senior citizens at least every quarter under intimation to the jurisdictional police station is being pursued.

Equality and Non-Discrimination

Of late many state governments and high courts are gaining awareness about the problems faced by senior citizens in accessing justice. The bulk of the cases deal with pension and property disputes. Alternative dispute resolution mechanisms for mass clearance of such disputes has been attempted. raised. Although the provision is in the Maintenance and Welfare of Parents Act to punish children who abandon parents with a prison term of three months or a fine, there are very few cases reported.

Accountability

There is a problem of accountability. No one is being held accountable when justice is denied and delayed to senior citizens. Technology whereby higher functionaries can monitor the delays in matters involving older persons is a way out. The application for maintenance may either be filed in the district where the senior citizen stays or last stayed, or in the district where the child or relative stays. Once the application for maintenance under Section 4 has been submitted, the Tribunal will issue a notice to the children. They will have the opportunity of being heard. The application must be disposed of within 90 days. The Tribunal shall determine the amount to be paid, subject to a maximum of Rs 10,000. However, very few parents and senior citizens are accessing these tribunals which indicates poor awareness of its services and no accountability on the part of officers.