

## **Eleventh Session of the Open-ended Working Group on Ageing**

### **Substantive Inputs :RIGHT TO WORK AND ACCESS TO THE LABOUR MARKET**

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#### **National Legal and Policy 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. These constitutional rights when applied to senior citizens as a defined social group should provide the basis for a national legal framework on right to work and access to labour market. However, the constitutional provisions do not explicitly bar discrimination on grounds of age, though sex, race, caste, and religion are stated. The National Policy of Older Persons 1999 says that "employment in income generating activities after superannuation should be the choice of the individual". The policy also goes on to state that "Organisations which provide career guidance, training and orientation, and support services will be assisted. Programmes of nongovernmental organizations for generating incomes of old persons will be encouraged. Age related discrimination in the matter of entitlement to credit, marketing and other facilities will be removed. Structural adjustment policies may affect the older workers in some sectors more adversely, specially those in household or small scale industry. Measures will be taken to protect their interests." However, India does not have an Equal Opportunity Act that can give teeth to a Right to Work and Access to Labour market for elder persons.

India does not have codified law that specifically deals with matters relating to senior citizens' access to the labour market. The Industrial Employment (Standing Orders) Act, 1946 has a Central Schedule, Schedule I-B wherein retirement age is stated as 58 years. The establishments not governed by Industrial Employment 1946, the age of retirement is decided by service conditions such as settlement/appointment letters/employment agreements. If the retirement age is not determined anyone can work till the time he is physically fit and able to work. In a country such as India, where no universal social security exists, people tend to work as long as they can. Even those retiring with a pension tend to search for contract-based re-employment in the formal sector or join the informal sector.

The biggest challenge faced by senior citizens in enjoying the right to work and accessing labour market is the huge number of young workforce that is joining the labour market every day. Senior citizens are at

a disadvantage when competing against younger persons. Government policies also work in favour of younger citizens through setting a low retirement age.

At all India level, the combined labour force participation rate of elderly men and women was 42 per cent in 1983 and the same declined, to 37.1 per cent in 2011-2012. Elderly males participate more in economic activities than elderly females. Almost 80 per cent of the aged workers were engaged in agriculture sector in 1991. The total number of elderly workers in India was approximately seven per cent of the total work force. Labor force participation rate of men in urban areas fell from 50.4% in 1983 to 36.5% in 2011- 2012 and urban elderly female labour force participation declined from 13.8% in 1983 to 7.7% in 2011-12. Rural female labour force participation has remained stationary in the 22% range all these years. A large number of women may be recorded as economically inactive in statistics but they would be contributing to home-based economic activities. In rural areas, labour activities of women, mostly in agriculture sector are marked by low incomes. Dr. S. Irudaya Rajan made a study on "Demographic ageing and employment in India". The study is part of the ILO Asia-Pacific Working Paper Series. He has stated that the low level of benefits and their limited coverage push large numbers of older people (particularly older women) to continue working in the informal economy.

#### **Availability, Accessibility, Acceptability and Quality**

In India, owing to demographic constraints of a huge young workforce, access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations has been minimal. A large number of elderly citizens in India are illiterate. Governments in many states have run literacy campaigns that have ushered many elderly into the world of letters and improved their worldly prospects. Appropriate workplace accommodations wouldn't be a problem in India's informal sector given the premium placed on respect for old age. In India's formal sector, elderly are virtually invisible past their sixties, especially in private enterprises. Some state governments are offering skill development courses for elderly. However, ageism remains a trenchant problem. India has labour laws that mandate safe working environments, provident fund, medical insurance and labour courts and labour welfare administration equally available to the elderly. The Mahatma Gandhi National Rural Employment Guarantee Act supports many senior citizens and also has safeguards to prevent violation of rights of workers. With little old-age income support and few savings, labour force participation remains high among those aged 60 and older, particularly among rural Indians. Most of these older women are illiterate and unskilled. Not only do a large share of the elderly earn an income, they even support their adult children who live in homes and work on farms owned by their parents. Many elders in India desire gainful re-employment and believe they are still entirely productive citizens and for many it is a means of survival. AgeWell Employment Exchange for Older Persons attempts to bring the opportunity seekers and providers together. Over 45000 retired and old people have benefitted under this program. Over 5 lakhs retired people are working as tutors in their own locality/ nearby areas.

## **Equality and non-discrimination**

No, age is not one of the prohibiting grounds for discrimination. That is because of India's massive youth population. India's national policy on older persons restricts itself to removing "age related discrimination in the matter of entitlement to credit, marketing and other facilities". Access to employment is not specified. Employers tend to be hesitant to hire older persons on a regular salaried basis in view of their age and perceived deterioration of health. Few studies were conducted on "Problems of Women in unorganized sector in India". It is stated that the female labour force constitutes one third of the rural workers in India. Elderly Women workers face serious problems and constraints related to work such as lack of continuity, insecurity, wage discrimination, unhealthy job relationship, absence of medical and accident care etc. The exploitation of female labourers in rural regions happens both horizontally and vertically.

## **Remedies and Redress**

The Maintenance Tribunal hearing property and maintenance related complaints of senior citizens need to be expanded to deal with all complaints of seniors. Under the Equal Remuneration Act, 1976 payment of equal remuneration is done to both men and women, to prevent discrimination against women and treat them equally and in a fair method. Under the penal laws of India, no criminal sanctions are prescribed, only civil law actions can be instituted. Indian laws do not prescribe any retirement age for private organisations. However, the State can make laws which might recognize discrimination on grounds of age as an offence and even consider affirmative action that helps elderly women, who can be considered in the "weakest of the weak" section. Equal Remuneration Act, 1976, was a great initiative due to which elderly persons are found in the corporate sectors. It has provided a different perspective and confidence in women and elderly in terms of their working capabilities. In the case of non-payment of the wages or unequal rates, the employer/worker has complete rights to complain or appeal to the authorities. After filing the complaint, within 30 days required orders are passed. The orders passed are final and cannot be further subjected to any appeal. These days, many people in their 60s and 70s are physically fit and employable. They often feel the need to continue working, even after retirement, to ensure their economic independence and good quality of life. Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness the participation of senior citizens in socio-economic development process.

