

Right to work and access to labor market

Definition

According to Nepal's Right to Employment act 2018, (1) Every citizen shall have the right to employment. (2) For the purposes of sub-section (1), every citizen shall have the right to practice appropriate labor subject to this Act or the prevailing law. Similarly, according to the Constitution of Nepal, article 34, Right to Labour (1) Every labourer shall have the right to practice appropriate labour. (2) Every labourer shall have the right to appropriate remuneration, facilities and contributory social security. (3) Every labourer shall have the right to form and join trade unions and to engage in collective bargaining, in accordance with law.

However, in these documents, there is nothing about the work and older people. Right to work and access to the labor market should be defined as, "every citizen including people of 60 and above age group who are healthy, capable and willing to continue their work shall have the opportunity to gain his living by doing income generating activities which they freely choose or accept. The state must be responsible for technical and vocational guidance and training programmes to achieve the full realization of this right."

Scope of the right

There is not any policy regarding the employment opportunity for older people. In the Right to Employment Act 2018 of Nepal, unemployed citizen means a citizen of the age group from eighteen to fifty nine years who is not involved in employment for at least one hundred days in one fiscal year or who is not involved in self-employment generating such minimum income as prescribed. Each right related to employment is targeted to the people of the so called active age group, 18-59. So, we can see there is a lack of realization that people of 60 and above age group who are active, healthy and can freely involve in income generating activities for their livelihood or to support their family members.

State obligation

Older people should be also considered as active, working groups in the Right to Employment Act. We can see biasness and ageism in the clauses of the act like, the meaning of unemployed citizens. Without amendment of this act, nothing can be changed.

There is a mandatory retirement age in Nepal according to the rules of the organisation. This must be changed. There must be a system of retaining, retraining and recruiting older people like other age groups. Large numbers of older people are self-employed in

Nepal. Most of them are farmers, vendors and unpaid caretakers of the family. But there is no system of upgrading their knowledge, skill and facilitating them in their work.

Special considerations

There are lots of things that should be done for the right of older persons to work and access to labour market in the context of Nepal like:

1. Formulation of flexible or gradual retirement scheme- Nepal government still practices the same retirement scheme which was made when the life expectancy of Nepali citizens was almost half of today. Recently, the retirement age limit of civil servants increased from 58 to 60.
2. Protection of older people in the informal sector- Large numbers of older people engage in the informal sector or are self-employed in Nepal. But there is no policy for protection and promotion of the work they are doing.
3. Recognition of older women's contribution in family members- The contribution which older women are providing to their family members are unrecognized and unpaid. In Nepal, older women are housewives and caretakers of grandchildren as well as family and relatives. Older women's role in maintaining the culture and tradition is unrecognized.
4. Private sector should increase the candidate age limit for job opportunities. They should also target older people in their services like Insurance Company of Nepal hesitates to do insurance of older people, bank and cooperatives hesitate to provide loan to older people

Implementation

Government, stakeholders as well as the private sector are unaware about the normative framework on the rights to work or access to the labor market for older persons in Nepal. Consequently, the normative framework has not been implemented yet. Older people are still denied the right to work and access to the labor market.

Access to justice

In Nepal, there is no specific definition regarding the right of older persons to access justice. Generally, access to justice comprises legal awareness, legal protection, adjudication, legal aid, enforcement and civil society oversight. It supports peace by focusing its citizens into providing remedy for resolving personal and political issues and disputes. According to the Constitution of Nepal, Article 20 rights relating to justice are ensured as fundamental rights of people in general. Besides the constitution, Nepal ratified many international laws for effective, efficient and inclusive accessibility of justice to its citizens.

Access to justice should be defined as "All citizens without any discrimination on the basis of age, ethnicity, gender and geographical location should have ability to seek and obtain a remedy through formal or informal institutions of justice for complaints in compliance with human rights standards."

Scope of the right

- a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;
- b) Elimination of the influence of ageist stereotypes at any stage of judicial or no judicial proceedings, including the award of damages or compensation;
- c) Access to timely legal proceedings, especially in situations of immediacy;
- d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;
- e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others ;
- f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;
- g) Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons' effective role as direct or indirect participants in justice proceedings;
- h) Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons;
- i) Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;

- j) Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population; and
- k) Access to prompt remedies and redress when older persons' right to access justice is denied.

State obligations

There must be specific policy on the rights of older persons regarding access to justice. Then, the government should take strict implementation mechanisms to ensure the rights. Advocacy and campaigning should be done to aware the people on the Right to Justice of older people.

Special considerations

In the context of Nepal, following considerations should be included in the right of older persons to access justice:

1. All persons must be equal before the law and are entitled without any discrimination to equal protection of law.
2. Physical and mental state of older persons must be considered while charging punishment against criminal activities.
3. Specific legal appliance offices must be formulated to register complaints, application or other statements for further procedure to access justice. Though there are some rudimentary provisions in place but virtually they are defunct for any practical purpose.

Implementation

Government, stakeholders as well as the private sector are unaware about the normative framework on the rights to access justice for older persons. The normative framework has not been implemented yet in the context of Nepal.