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THE REALITY OF THE RIGHT TO HEALTH

-Kundan Mishra

It is the spirit and not the form of law that keeps justice alive. - Earl Warren, Indian Express.

Quoting from the constitution of the World Health Organisation, “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Further, the WHO also recognises the right to health as fundamental to attain peace and security, thus recognising it as a fundamental right of all human beings. The UN General Assembly, in 1966, adopted the International Covenant on Economic, Social and Cultural Rights. ICESCR, which was brought into force a decade after its adoption (1976), includes the right to a standard of living with the right to health enshrined as an inference in various clauses, such as this one. Thus, the Right to health has been established as a fundamental right internationally.

Recently, Dr Tlaleng Mofokeng, the United Nations Special Rapporteur on the Right to Health (right), addressing the Centre for Health Diplomacy and Inclusion, urged governments and organisations to use the right to health approach to ensure everyone has access to the essential health services. At the conference, the right to health was agreed to be a universal right, and it was emphasised that its optimal operationalisation requires erasure of legal, social, and economic barriers, mobilisation of resources and knowledge, establishment of functional, efficient, accountable systems and an ardent effort. The gruesome on-ground reality of accessibility to quality health was called out at the conference by the Indonesian Journalist Betty, who argued for more educational awareness around sexual and reproductive health.

In the backdrop of rising economic disparities, particularly in the developing nations, the drastic impacts of global warming and climate change, it becomes inevitable to pause and reflect on the ground reality of this right’s exercise, preservation and operation.

Indian judiciary's recognition of the right to health as a fundamental right implicit in Article 21 aligns with the human rights, recognised globally. In cases such as Francis Coralie Mullin vs Union of India, the Supreme Court established that the right to health is inclusive of Article 21. But mere recognition by the judiciary does not guarantee its protection. Active action by the government on the same is required to realise this right to health as a reality. The COVID-19 pandemic disclosed this gap in all its entirety and bareness. Access to hospital beds, oxygen masks became a luxury; those years of terror again reminded the poor and the middle class of their powerlessness and deprivation.

While the government never gets tired of advertising its free grain distribution initiative, the challenges of malnutrition continue to stare us in the eye, with the NFHS reporting rate of child stunting at 35.5% and child wasting at 19.3%, respectively.

We won't have a society if we destroy the environment - Margaret Mead, Indian Express

These are the figures recorded in records, reports, surveys and stats. Why fail to reflect on the violation of the right to health caused by economic deprivation and magnified by climate change, most visible in the regions of Delhi NCR, particularly in these winter months? Take a walk on the Rejangla Road, Sector 5 of Gurugram, and shift your gaze to the right and left. On the pavements, the homeless have found their shelter, breathing the poisonous, polluted air, day and night. On my night strolls, I have seen girls younger than me boiling rice; the question of nutrition seems less likely to be even a point of consideration. It is also unlikely that they might have any access to proper sanitation facilities, forget about nutritious food. In such circumstances of the administrative failure to improve the AQI of Delhi NCR, the economic constraints are depriving so many of oxygen, also! Around two to three decades ago, no one knew about water purifiers; now, it has become an essential in almost all households. How far air purifiers are from becoming a regular part of our homes does not even need any estimation; the talk in the town around this gruesome reality is on the boil every winter. The Lancet Countdown reports that around 70% of deaths in India are associated with poor AQI.

In the last few years, there have been several cases of death by electric shocks in the monsoon season in the Delhi NCR. The case of students who died in the basement area of the Rao IAS coaching also signals the systemic recklessness that led to loss of life. In Jharkhand, infants died in the ICU that caught fire. Several people in India lost their lives in a stampede. Such

cases send jolts, leave us in disbelief and dismay, and rightfully, citizens feel betrayed. Dushyant Kumar once asked, “Kaha toh charaga tay tha sabhi ke liye, Kaha charaga mayassar nhi kisi ke liye?”

When the price of life becomes 5 lakhs and 15 lakhs INR of compensation, it becomes compelling to ask where is the justice that was promised, where is the Right to live and die with dignity that was promised?

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