

THE LEGALITES LEXSCRIPTA

Volume 1, Issue 3 (July – Sept. 2025)

Page No. 242 to 254

Editor-in-Chief: - Prof. (Dr.) Aryendu Dwivedi, LL. D, NET

PRISONER’S RIGHTS -: IMPRISONMENT AT WHAT COST?

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ABSTRACT:-

“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care” – MAHATMA GHANDHI.

The criminal jurisprudence pivots around the very principle of reformation while the prevalence of prison cruelty and disenfranchisement of prisoners irks the hipocratic nature of the so-called reformatory justice theory. Prison cruelty is not at all a shattered occurrence or sporadic instance rather this anomaly is as constant as prison itself, whose continuance stretches across all nations of the world. Despite the worldwide gargantum and dissent, the prevalence of disenfranchisement of prisoners evinces the discrepancy among the legal provisions that safeguards prisoner’s rights and also shows the shortfalls in execution and implementation. Crime is a pathological aberration that the criminals can ordinarily be redeemed, and the state has to rehabilitate rather than avenge. Therefore, the focus of interest in penology must be individual and the goal must be in salvaging him for society, can upholding the above statement **Justice V.R KRISHANA IYER** assets that: - *“convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess”*.

It is very rightly said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones. What is even more surprising is the fact that such barbaric treatment and vicious tourtour of oppression still persists even in 21th century through the globe. The condition of prisoners inside the prison must mandatorily be uplifted.

This research paper thus commences by specifying the term prisoner while emphasizing majorly on their rights and privileges. The nuanced details of the paper inclines towards the discrepancy among the legal provisions and the lacuna of their execution and implementations. The poignant essence of this paper is the presence of various judgements of the courts that upheld the prisoner’s rights and prevents the infringement of their human rights. The paper thus wraps up by highlighting

the pre-requisite importance of every human being's fundamental right and endorses the prima facie dogma of criminal jurisprudence profoundly deemed as: - The Reformatory Theory.

Keywords:-

Reformatory justice theory, Prisoners, Sporadic, Gargantum, Disenfranchisement, Penology, Pathological aberration, Nuanced, Poignant, Dogma, Bogus.

Research question :-

Does predestined detainment of individuals comes at the cost of loss of their freedom and fundamental rights?

Research methodology:-

This paper has been written in Empirical Methodology. The entire research paper is based on the Primary sources employing the historical analysis and observed skills irked with the help of poignant legal precedents.

Introduction:-

Nelson Mandela very rightly stated that:- "No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but how it treats its lowest ones".

The criminal jurisprudence pivots around the three poignant pillars namely:-

- 1) Police Administration.
- 2) Judiciary.
- 3) Prisoner's Administration.

It is currently generally observed in society that the individuals predestined to detainment in jail specifically are subject to reformatory changes, but does that change comes at the cost of loss of their basic human rights? Or does that means the infringement of their fundamental rights? Absolutely no!

Prisoner's are also human beings and thus they are to the same extent subjected to the basic human rights that every normal human being has except according to the procedure established by law, but has the society ever given you what is truly yours this easily? If such would have been the case the pure essence of diamond would have been known before it endures the furnace.

As specified earlier also that conviction of human being does not render him non- human, he still must be treated like one. The famous case of **Charles Sobraj v. The Superintendent, Tihar Jail**¹, honorable Supreme court through **Justice Krishna Aiyer** held that :- "imprisonment do not spelling farewell to fundamental rights although, by a realistic appraisal, courts will refuse to recognize the full panoply of part III enjoyed by every citizen". He further coined that

¹ 1978 AIR 1514

imprisonment of a prisoner is not merely retribution or deterrence rather it is also rehabilitation. There is no harm in giving a prisoner the basic human rights that every human on this planet has but what is to be kept in mind is the fact that in the light of offering basic rights he should not be treated as a free man with all the absolute rights and luxuries . His freedom must be subjected to restrictions and legal limitations in consonance to his nature of offence furthermore, these restrictions must also be not arbitrary and monopolistic in nature.

The law regarding prisoner's right has never been through a constant phase, this has timely evolved only with every time better safeguards and rehabilitation techniques . Honorable Supreme Court of India has been deliberating with the Central and State government since a long time to improve the deteriorating condition of the prisoners which is pivotal because of overcrowding of prisoners , Inhumane and unhygienic conditions, lack of training facilities, personals and poor infrastructure etc. Therefore it is pre-requisite to sensitize prisoner's about their rights and the constitutional frameworks formed for them , until and unless they aren't propagated and implemented in every corner of the nails in the world , the entire duplicity of criminal justice system is a nullity and betrayal to the entire human faith and kind.

This research paper thus deals with the concept of who are prisoners, rights of prisoners, constitutional rights, and human rights, how their rights are being infringed, and certain acts and various international legislations to protect their rights.

Review of literature:-

★**Justice Krishna Aiyer** :-“ Imprisonment do not spelling farewell to fundamental rights although, by a realistic appraisal, court's will refuse to recognize the full panoply of part III enjoyed by every citizen.”

★**Justice V.R. Krishna Iyer** :- “Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.”

★**Nelson Mandela**:- “It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones”

★ **Mahatma Gandhi**:- “Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care” .

Who are called prisoners ?

Prisoners in common parlance means a person who is deprived from freedom and liberty and kept in restraint, Confinement or custody by the order of court of law. A person can be a prisoner in trial until he proved innocent or can be serving a sentence in prison. Particularly we can say that the person who has committed any offence which is prohibited by the law of the state and found guilty for the offence or is in the trial of the offence will be kept in Custody that is known as jail or prison where such person are kept and these persons are known as prisoners.

The Oxford English Dictionary defines :- a prisoner as a person who is kept in prison as punishment for a crime, or who is captured by an enemy, especially during wartime. The dictionary also defines it as someone confined or restrained.

What is a prison?

This is considered as an important part of criminal justice system of our country. It is generally considered as a place in which individuals are physically confined and are deprived of their personal freedom to a certain extent. Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. The primary purpose of imprisonment is to protect society against crime. The objective of imprisonment may vary from country to country namely :-

- 1) Punitive.
- 2) Deterrence.
- 3) Reformative.
- 4) Rehabilitate.
- 5) Expiatory.

While the prima facie function remains constant that is to reduce the scope of increasing crime rates in the world. What must be kept in mind is that just like any normal person “*prisoners are the subjects and not the enemy of the state*”. The Prisoners are sent to prison “*not for punishment but as punishment.*”

The use of imprisonment as a direct punishment of the court was introduced to **Western Europe and North America in the 18th century**. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture. Over the years there has been a lively debate, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety.

In addition to various Indian judgment to facilitated a change in the approaches of criminal justice system, the United Nations has also provided certain guidelines for the treatment of prisoners. The State is under legal obligation for protecting its subjects and for the compliance of which citizens are given certain basic privileges recognized by the Constitution of India and other legislations. However, the enhancement of rights of the prisoners raises a question as to what extent it is viable under Article 21 to incorporate within its ambit, the access to conjugal rights to the prisoners within the jail premises. Moreover, to what extent the arena of rights of the prisoners can be enhanced in

the garb of human rights so as not to violate the human rights of the victims who were the primary sufferers of the offence committed upon them.

Kinds of prisoners:-

As per **Section 3 of the Prisons Act, 1894**², Prisoners are classified into three groups namely:-

- 1) Criminal prisoner's.
- 2) Convicted criminal prisoner's.
- 3) Civil prisoner's.

★Criminal prisoner's :-

This means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court – Martial.

★Convicted criminal prisoner's:-

Means any Criminal Prisoner under sentence of a Court or Court – Martial and includes a person detained in prison under the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or under the Prisoner's Act, 1871 (V of 1871).

★Civil prisoner's :-

Means any prisoner who is not a Criminal Prisoner.

Historical development :-

Crime is a consequence of pathological aberration and thus world wide gargantuan contention on the sporadic topic is spontaneous outcome such dogma is as vintage as the prison itself. Law in prisoner's right has been evolving and continuously developing in nature.

From the case of **Platek v. Aderhold (USA)** where court ruled that it had no power to interfere with conduct of prison or its rules and regulations, to the case of **Johnson v. Avery**³ wherein the courts recognized certain rights of the certain rights of the prisoners the change has been drastic in nature.

Moving on to the Indian sphere the judiciary has always irked the backing of PART-III of the constitution for supporting the inmates. The country very firmly believes and endorses the pre-requisite dogma of criminal jurisprudence and the entire system revolves on that philosophy only that is :- transforming the criminal into better human beings and upholding the criteria's of reformatory theory. Indian judiciary however through Judicial Activism has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of article 21 of the Indian Constitution and also taking into consideration the relevant provisions

² Section:- 3 of The Prisoner's Act 1894.

³ 393 U.S. 483 (1969)

of International Covenants formulated for monitoring and supervising the prisoners. It must be kept in the mind that Prisoners are sent to prison “*not for punishment but as punishment.*” Therefore, the focus of interest in penology must be individual and the goal must be in salvaging him for society.

In the case of **Charles Wolff v. Mc Donnell**⁴ and **DBM Patnaik v. State of Andhra Pradesh**⁵ and **Sunil Batra v. Delhi Administration**⁶ by the apex court of USA and the honorable Supreme Court of India respectively has emphatically stated that it must be realized that a prisoner is a human being as well as natural person or a legal person. If a person gets convicted for a crime it does not reduce him to the status of a non person whose rights could be snatched and taken away at the whim and caprice of the authorities.

Fundamental rights of the prisoners :-

Fundamental rights form the core of human rights in India. These are the basic human needs which cannot be scrapped off except if any direst predicament exists. The country grants Articles like :- 14, 19, 21 to the prisoners as well however because of the nature of their offence they cannot be given full advantage of these articles.

★Cases :-

A) State of Andhra Pradesh v. Challa Ramakrishna Reddy⁷ :-

Held:- a prisoner is entitled to all fundamental rights unless curtailed by the constitution.

B) Charles Sobraj v. Superintendent Central Jail Tihar⁸:-

Held:- All rights available to prisoner’s under articles:- 14, 19, 21 are thought limited but cannot be said to be static. They are bound to or rather will rise to new human heights when challenging circumstances arise.

C) State of Maharashtra v. Prabhakar Pandurang Sanzgir⁹:-

Held:- Honorable Supreme Court stated that mere fact that someone is detained cannot deprive one of his fundamental rights and that such conditions are not to be extended to the extent of the deprivation of fundamental rights of the detained individuals. Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement.

⁴ 418 U.S. 539 (1974)

⁵ AIR 1974 SC 2092,

⁶ 1978 AIR 1675, 1979 SCR (1) 392, 1978 SCC (4) 494.

⁷ AIR 2000 SC 2083, 2000 (4) SUPREME 741

⁸ 1978 AIR 1514.

⁹ 1966 AIR 424

D) Francis Corahe Mullin v. The administrator, UT Delhi -¹⁰:

Held:- Justice Bhagwati upheld the statement of Justice Douglas and Justice Marshall, wherein Justice Douglas in his thesis specified that :-“Every prisoner’s liberty is of course circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration and therefore the imposition of any serious punishment within the prison system requires, procedural safeguards”.

Rights granted by Indian Constitution:-

Any crime of offence is the result of pathological aberration or diseased and corrupted mind hence, the intent of Penology must be in reforming the convicts rather than giving punitive punishments. Honorable Supreme Court stated that “Imprisonment does not create a spell to waive off the fundamental rights”. The court has declared that fundamental rights are enforceable in the case of Prisoners as well their rights are not restricted by their imprisonment.

★DBM Patnaik v. State of Andhra Pradesh :¹¹-

In this case the honorable court stated that it must be realized that a prisoner is a human being as well as the natural person or legal person. If such person gets convicted for a crime, it does not make him a non-person his rights are also attached to him and it cannot be taken away by anyone or not by the Prison authorities as well.

The Prisoners are no longer considered as a slave of the nation who would leave at the prison and convicted to the civil death and it does not disqualify a person to be a person just because he did an offence and going through the imprisonment.

★Charles Sobraj v. Superintendent Central Jail, Tihar:¹²-

The honorable court in this case held that the rights available to the prisoners under Article 14, 19, and 21 of the Indian Constitution are limited but cannot be static.

1) Article :- 14 Equality before law

Article 14 of Indian constitution states that all prisoners should be treated alike it talks about equality before law and equal protection of laws within the territory of India. There can be a reasonable classification i.e. intelligible differentia between the prisoners but there should not be any kind of discrimination between the prisoners on the basis of their religion, caste, sex, colour or status.

¹⁰ 1981 AIR 746

¹¹ 1974 AIR 2092

¹² 1978 AIR 1514.

2) Article :-19 Freedom of speech and expression

This article guarantees six freedoms to all citizens of India which are stated as under:-

- 1:- Freedom of speech and expression.
- 2:- Freedom to assemble peacefully without arms.
- 3:-Freedom to form associate or union.
- 4:- Freedom to move throughout the country of India.
- 5:- Freedom to settle and reside in any part of India.
- 6:- Freedom to practice any profession or to carry out any occupation, trade or business.

Some of these freedoms are curtailed and restricted in respect of prisoners such as :- freedom of speech and expression, freedom to move freely or freedom to become member of any association.

3) Article:- 21 Right to personal life and liberty

This article states that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This article acts as the save guard for majority of the inmates in the country because of its umbrella nature that covers almost all the basic rights and privileges for a human being.

★A.K Gopalan v. State of Madras (1950)¹³

In the beginning, the Supreme Court was not responsive to the protection of the rights of the prisoner. It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are non-persons and fundamental rights under the constitution are not available to them by their being incarcerated. The Court declared that a person losses his right to personal liberty by way of detention under valid law enacted by a competent legislature and so long as he remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.

★Right to life and personal liberty :-

In the case of **Kharak Singh v State of U.P** ¹⁴the court held that the term life carries meaning just more than existence like that of an animal. Here right to live is not just restricted to mere existence or physical survival it has wide scope.

★Right to live with dignity:-

¹³ AIR 1950 SC 27

¹⁴ 1963 AIR 1295

The right to live with dignity is protected by the constitution. This is a concept which states every person's life is precious and should have right to live his life with dignity.

In the case of **State of Andhra Pradesh v. Challa Ramakrishna Reddy**¹⁵ court held that right to life is a basic human right granted to every citizen and any authority cannot violate this right. A prisoner does not stop being a human if he is under prison he continues to be human and entitled to enjoy these rights.

★Right to health and medical treatment:-

This is a basic fundamental right which is guaranteed to every individual to maintain the standard of physical and mental health.

In the case of **Rasikbhai Ram Singh Rana v. State of Gujarat**¹⁶ the court held that right to medical treatment is one of the basic human rights that should be made available to each and every person. *The court guided the jail authorities to provide the proper physical and mental health care facilities to prisoners who are suffering from any disease.*

★Right to speedy trial: -

Every prisoner has the right to speedy trial irrespective of the crime he has committed to get the justice. As justice delayed is justice denied, so not to delay the justice. Speedy trial should be granted to the prisoners.

In the case of **AR Antulay v. RS Nayak** the court held that the right to speedy trial flows from article 21 and it includes inquiry, trial, appeal and revision as well. The accused cannot be denied the right on the ground that he did not demand for it.

In the case of **Hussainara Khatoon v. State of Bihar**,¹⁷ the Supreme Court highlighted the shocking situation where a significant number of individuals, including children, were incarcerated for extended periods while awaiting trial. The court expressed concern about the delay in trial, especially for those who could not afford bail. Court held *that a procedure that keeps large large number of people behind bars without trial for an extended period cannot be considered reasonable, just or fair and it does not conform to the requirements of Article 21.*

★Right to free legal aid :-

Free legal aid is the term that generally connotes the fact that if the accused is due to financial issues unable to get a counsel appointed it becomes the duty of the state to get the same done that too without any fees owing to the principal of welfare state and make him updated about the matter in the court at every stage.

¹⁵ AIR 2000 SUPREME COURT 2083.

¹⁶ 1999 CRILJ1975

¹⁷ 1979 SCR (3) 532

In the case of **Madhav Hayawadanaro Hoskot v. The state of Maharashtra** the court held that *Article 21* and article *39 A* along with *Article 142* and *Section 304 of CrP.C* together emphasized that the government of the country has a duty to provide legal aid and legal services to the accused.

★ **Right against solitary confinement:-**

Solitary confinement is the phenomena that majorly invokes the absolute confinement and isolation of prisoners in the prison cells, convicts and inmates here are kept under strict monitoring and in different cells. Thus, prisoner's have right against this and this involves the infringement of their fundamental rights under article 21.

In the case of **Sunil Batra v. Delhi Administration** the court held that prison authorities cannot treat prisoner like an animal. They are also human beings the highly dehumanizing or derogatory act against the nature cannot be done to a prisoner. This is against the law.

★ **Right to be released on the due date :-**

Along with the right to be released on the due date prisoners also have right to be released *even before* such due date but such right must be *exercised only in exceptional circumstances*.

★ **Right against custodial violence and death police lockups and encounters :-**

Custodial violence includes physical violence, sexual harassment or custodial deaths such, type of punishment is against law and inhuman. Prisoner's does have the safeguards for this.

In the case of **Sunil Batra v. Delhi Administration**, a convict, *Sunil Batra*, reported violence in prison to the Supreme Court. The court held that prisoners should be protected from corporal punishment and violence.

In **State of Uttar Pradesh v. Ram Sagar Yadav and ORS**, a farmer refused to pay the bribe to local police constable died under suspicious circumstances within six hours of detention. Honorable court convicted the accused individuals involved in the case.

★ **Right against handcuffing and bar fetters :-**

Convicts or arrested person should not be handcuffing except in the cases of justifying circumstances.

In the case of **Prem Shankar Shukla v. Delhi Administration**,¹⁸ honorable Supreme court held that handcuffing should only be used in the exception cases. The onus is on the officer making the arrest, that sufficient grounds existed which justified the need of handcuffing. No person should be handcuffed as a routine merely because the offence with which he is charged is punished with serious punishment.

¹⁸ 1980 AIR 1535 1980 SCR (3) 855 1980 SCC (3) 526

In the case of **Birendra Kumar Rai v. Union of India**,¹⁹ the supreme court held that handcuffing amounts to primitive measure and this violates the personal liberty guaranteed under article 21 of the constitution of India.

★ **Right to meet friends and consult a lawyer:-**

The famous case of **Sunil Batra v. Delhi Administration**, the Supreme Court recognized the right of prisoners in India to be visited by friends and relatives, subject to search, discipline and security criteria. Such visits provide comfort to inmates in isolation. Prisoners have the right to meet and consult with their lawyers.

★ **Right to reasonable wage in prison:-**

Section :- 53 of India Penal Code specifies prisoners who are sentenced to rigorous imprisonment to be assigned work, but such provision does not mandates such work to be unpaid.

Now if a person whether free or a prisoner provides labour or services for remuneration that is *less than minimum wages* the work falls within the *scope of "forced labour"* under Article 23 of the Constitution.

In the case of **People's Union for democratic rights v. Union of India**²⁰, the Supreme Court noted that services provided for remuneration below the minimum wage results into forced labour . Such individuals can go for the enforcement of their fundamental rights by asking the Court to direct the payment of the minimum wage.

★ **Right to be informed about their legal rights :-**

Prisoner's have the right to be informed about their respective legal rights and privileges in addition to that they have the right to receive all court documents and papers.

★ **Right to be examined by mental health professionals:-**

The Model Prison Manual, 2016 mandates that prisoners with mental health conditions be admitted to mental health institutions and counsellors should be made available to examine the prisoners.

Apart from that the prisoners inside the cell with also have this right with them and they can use this in cases of such violation.

★ These rights are further supported by the historic judgement of the honorable Supreme court in the case of **D.K Basu v. State of West Bengal**²¹ that directed following guidelines:-

1) It is the right of every person detained to know the grounds of detention.

¹⁹ 1992 CRILJ 3866

²⁰ 1982 AIR 1473 1983 SCR (1) 456 1982 SCC (3) 235 1982

²¹ (1997) 1 SCC 416.

- 2) The person arrested must be made aware of his rights to have someone informed of his arrest or detention as soon as he is out under arrest and detention.
- 3) The person must be medically examined at the time of arrest.
- 4) The person has the right to consult a legal counsel.

Other provisions :-

Apart from the above legislation there are various other legislations and provisions regarding the rights of prisoners, namely:-

International covenants and legislations :-

The right of prisoners in International Law is found in a number of International treaties and that too following the *two World Wars*. Due to the widespread *denial of civil rights and liberties* on the basis of racial, religious and political discrimination had a profound effect on the international law of prisoner's right. The systematic use of violence including wanton murder and ultimately genocide and use of slave labour, abuse and murder of prisoners of war, widespread deportation and confiscation of property forced a large scale changes that began to occur in all areas of international law including prisoners rights. At present, there are numerous international instruments which lay down codes by which prisoners should be dealt with. Following below are some famous ones :-

- 1) Universal Declaration of Human Rights.
- 2) UN Charter (1945).
- 3) Third Geneva Convention.(1929)
- 4) United Nations Standard Minimum Rules for the Treatment of Prisoners (1955).
- 5) International covenant on civil and political rights (1966)
- 6) Convention against torture and other cruel , inhumane and degrading treatment or punishment (1984).
- 7) Basic principles for Treatment of prisoners (1990).
- 8) Basic principles for the use of Force and Fire Arms by the Law enforcement officials (1990).

Conclusion:-

Crime or any criminal intent is the result of a diseased mind, it is a pathological aberration that ignites criminals to commit heinous quantum of acts. We as a nation has achieved a lot but much remains to be done, we cannot claim dogma of a developed nation if the lowest citizens of our country struggles for the basic human rights. Human life was never a mere animal existence then how is it that we, as fellow human beings, are capable of subjecting one another to treatment that is worse than the worst imaginable?"

The souls detained behind the bars are burdened by the weight of their heinous deeds but does that imprisonment comes at the cost of their fundamental rights?

What is to be kept in the mind is that **“locking up does not amplifies the locking out of justice”**.

Fundamental rights are the central tenet and the very essence and spirit of the constitution and not even the State has the authority to violate that Right. *A prisoner be he a convict, does not cease to be a human being*. They also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them from their fundamental rights. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights

Supreme Court has gone a long way fighting for their rights. However the fact remains that it is the police and the prison authorities who need to be trained and oriented so that they take prisoner's rights seriously, which sums up the fact that until and unless the execution and implementation of these legal provisions are performed with utmost honesty and piousness till then we cannot expect a reform in the system.

The foremost principal of democratic regime is the development of the society and a free living surrounding without monopolistic and hegemonastic governance .

In nutshell expecting a nation to be called a superpower and developed while it's lowest citizens struggles for the minimum basic human needs would definitely be the mockery of such a nation, hence "prudence lies in seizing triumph while the momentum is still in your favor."