

HUMAN RIGHTS FETCHING STATUS OF FUNDAMENTAL RIGHTS THROUGH THE ENHANCED CONCEPT OF ARTICLE 21 OF THE CONSTITUTION OF INDIA: AN OVERVIEW

Written by *Anuradha Koneru*

Assistant Professor, S.V.D Siddhartha Law College, Kanuru, Vijayawada

INTRODUCTION

“Human rights is a universal standard. It is a component of every religion and every civilization”

- Shirin Ebadi¹

Human rights, as the term is most commonly used, are the rights that every human being is entitled to enjoy and to have protected. This notion of Human Rights is a gift of contemporary human thought to culture and civilisation of the present era. The struggle to promote, protect and preserve human rights changes and holds continuity in every generation in our society. The concept and practice of human rights is the hallmark of any modern society. Since time immemorial, the story of human rights has been the story of human wrongs. It is perhaps to contain and curtail the wrongs by one human being or a group or a body of human beings against the other individual, or a group of beings against the other, that the institutions like family to society as a whole come into existence. The concept of human rights is a dynamic concept, which one has to understand basing on its basic aim that is “Man is born to be free and all that he must do is that be devoted to the wellbeing of human every kind of human being- of whatever race or religion, caste or creed or whatever sex and in all societies, developed and underdeveloped, traditional or modern”. This truth this great objective, belongs equally to everyone. This also sums up the basic objective of human rights, which over the years has gained considerable importance in international thinking and has been the subject of much discussion and debate in recent times. These have been and still are, discussed in international

¹ Available at : https://www.brainyquote.com/authors/shirin_ebadi

Shirin Ebadi is an Iranian lawyer, a former judge and human rights activist and founder of Defenders of Human Rights Center in Iran. For more details see https://en.wikipedia.org/wiki/Shirin_Ebadi

forum such as United Nations, in respective national parliaments, and in the media, and civil rights activities have been taking up the cause of emphasizing the importance and implementation of human rights for a civilized and healthy Society. Through several ways like recognizing, adopting UDHR 1948 and relative international conventions and making separate legislations in respective countries and establishing human rights commissions etc.² fortunately, in India is also one of the countries, which has been taking several steps for promotion and protection of human rights in India. Among these it is very important to understand the expansion of human rights through the enhanced concept of Article 21 of the Indian constitution in recent times in India.

THE CONCEPT AND EVOLUTION OF HUMAN RIGHTS

Everyone knows that ‘Human rights are those rights which are essential for the survival of humans and their life’, but no one knows exact origin of concept of Human rights. Simply an ordinary prudent man says that the concept of human right began at the start of the civilization on this earth. From the history and experts opinion at the beginning of human history man struggled for is existence against nature (where other man is also a part and parcel) and for protection, liberty and freedom. More over the human being in order to live happily, needs rights to smooth his/her life. This struggle paved the way to the concept of human rights. The most unique feature of human rights is that it is difficult to define but impossible to ignore. Human rights denote all those rights which are inherent in our nature and without which humans can’t live. Human rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simple because she or he is a human being”. These rights are indispensable for the human dignity which they can enjoy from birth to death. Scott Davidson rightly said that “The concept of human rights is closely connected with the protection of individuals from the exercise of State, Government or authority in certain area of

² The **Universal Declaration of Human Rights (UDHR)** is a historic document that was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais de Chaillot in Paris, France. Of the then 58 members of the United Nations, 48 voted in favor, none against, eight abstained, and two did not vote.

their lives, it is also directed towards creation of societal condition by the state in which individual are to develop their fullest potential”.³

Human rights are a legacy of classical and contemporary human thought to culture and civilization. Originally, people had rights only because of their membership in a group, such as a family. Then, in 539 BC, Cyrus the Great, after conquering the city of Babylon, did something totally unexpected—he freed all slaves to return home. Moreover, he declared people should choose their own religion. The Cyrus Cylinder, a clay tablet containing his statements, is the first human rights declaration in history.⁴ Later the idea of human rights spread quickly to India, Greece and eventually Rome. Like above, though there were so many evidences about long history regarding human rights all they are in ambiguous form. So, many writers accepted that human rights concept can be best understood from the Magna Carta in England (1215). Later, the American Declaration of Independence (1776), which proclaimed the right to life, liberty and the pursuit of happiness, the French Declaration on the Rights of man (1789), which is a document of France, stating that all citizens are equal under the law, the Bolshevik Revolution in Russia (1917), could be cited as important landmarks in the development of the concept of human rights and the U. N. Charter, 1945. Finally, the contemporary international statement of human rights is the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948 and provided first document listing the 30 rights to which everyone is entitled. Subsequently large number of international human right instruments and covenants came into existence such as International Covenants of 1966 and 1976 i.e. Civil and Political Rights and Economic, Social and Cultural Rights.⁵

DEVELOPMENT OF HUMAN RIGHTS IN INDIA

The Indian constitution was drafted after the adoption of the universal Declaration Human Rights (1948) by United Nations, but it was adopted at a time when the deliberations for the Universal Deceleration were in air, so that the framers of the Indian Constitution were

³ Senapati Tushar Kanti, “Human Rights and Dalits in India: A Sociological Analysis”, Kalinga Institute of Social Sciences, KIIT University, Bhubaneswar, Odisha, INDIA. Published in International Research Journal of Social Sciences Vol. 3(3), 36-40, March (2014). Available online at: www.isca.in, www.isca.me

⁴ Available online at : <http://www.youthforhumanrights.org/what-are-human-rights/background-of-human-rights.html>

⁵ For more detailed study about historical evolution of human rights please visit <http://www.humanrights.com>.

influenced by the concept of human rights⁶, and they already guaranteed most of the human rights which later on came to be embodied in the international covenant in 1966. In fact India was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. It is evident from preamble itself. The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of "dignity of the individual". More over even prior to the framing of the constitution for free India, Mahatma Gandhi had announced before the second round table conference⁷ that his aim was to establish a political society in India in which there would be no distinction between high and low class people, that women should enjoy the same rights as men; and dignity and justice, social, economic and political, would be ensured to the teeming millions of India⁸. This was one of the objects, which inspired Pt. Jawaharlal Nehru in drafting the objectives resolution in the constituent assembly and which were adopted on January 22, 1947. And this ideal of the objectives resolution was reflected in the preamble of the constitution which was adopted in 26th November 1949 with the specific mention of dignity of the individual. It is thus evident that during the period between 1946 and 1949 India had formulated the concept of human rights and embodied in our constitution. Though the concept of human rights spread in whole constitution like a golden thread, they were mainly apparent in preamble, part III and part IV of the constitution. Later India took a lead in this behalf and enacted Protection of Human Rights Act, 1993.⁹ This Act besides other provisions provides for the creation of a National Human Right Commission.¹⁰

In order to appreciate the concept of human rights under Indian Constitution, it is also pertinent to look to the aims and objects of the preamble, which are indeed the aims and objects of Indian Constitution. The preamble reflects the high purposes and noble objectives of the framers of the Constitution such as Justice to all in case of social, economic and political field; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity, and to promote among them all; and Fraternity assuring the dignity of the individual and the unity and

⁶ K.P. Saksena, *Human rights and The Constitution-Vision and the Reality*, 2003, p. 29-30.

⁷D.D., Basu , *Human Rights in Constitutional Law*, 2008, p. 16

⁸ Chapter 3- Directive Principles, 3.25.8. available online at: Ministry of Law and Justice website-lawmin.nic.in/ncrwc/finalreport/v1ch3.htm

⁹ C.J. Nirmal, *Human Rights in India-A historical, social and political perspectives*, 2000, p. 289-291.

¹⁰ C.J. Nirmal, *Human Rights in India-A historical, social and political perspectives*, 2000, p. 291-310.

integrity of the Nation, which are so identical with aspirations of UDHR. In part III of the Indian constitution one can evident some of identical rights of the UDHR, they are as follows:¹¹

Universal Declaration of Human Rights	Indian Constitution
Right to Life, liberty and security of person (Art. 3)	Article 21
Prohibition of Slavery, slavery trade etc. (Art. 4)	Article 23
Equality before law and non-discrimination (Art. 7)	Article 14 and 15 (1)
Right to effective remedy (Art. 8)	Article 32
Right against arbitrary arrest, detention etc. (Art. 9)	Article 22
Right against ex-post factor Laws [Art. 11(2)]	Article 20 (1)
Right to freedom of movement [Art. 13(1)]	Article 9(1)(d)
Right to own property and not to be deprived of property [Art. 17]	Article 19 (1) (f) ¹²
Right to freedom of thought, conscience and Religion (Art. 18)	Article 25 (1)
Right to freedom of opinion and expression (Art. 19)	Article 19(1)(a)
Right to freedom of peaceful assembly and Association [Art. 20 (1)]	Article 19(1)(b)
Right to equal access to public service [Art. 21(2)]	Article 16 (1)
Right to social security (Art. 22)	Article 29 (1)
Right to form and to join trade unions [Art. 23 (4)]	Article (19(1)(c)

But it would not be correct to contend that the above human rights are the only rights incorporated in Indian Constitution. Though, some human rights which do not find express mention in the Constitution do exist impliedly. Indian judiciary through judicial activism has been recognizing and interpreting constitutional provisions basing on human rights especially under Article 21 read with 32 of the Indian constitution.

EXPANSION OF HUMAN RIGHTS THROUGH THE ENHANCED CONCEPT OF ARTICLE 21 OF THE INDIAN CONSTITUTION

Article 21 of the Constitution of India is the heart and soul of Constitution. Its scope is being widened in an ever expanding horizon, by various judicial pronouncements. Article 21 lays

¹¹ Abdulrahim P. Vijapur, *The United Nations at fifty, Studies in Human Rights*, 1996, p.197- 201.

¹² This fundamental right from Indian constitution was omitted by the constitution (44 Amendment) Act, 1978

down, “no person shall be deprived of his life or liberty except according to procedure established by law”. The major landmark decision which led to the widening concept of Article 21 very particularly apex court started recognizing and interpreting Article 21 basing on human rights jurisprudence is *Maneka Gandhi v. Union of India*¹³. In *Maneka Gandhi* case, a number of progressive propositions were made to make Article 21 more meaningful by apex court and recognized so many human rights as fundamental right under Article 21. Some of them are as follows:

a) Right to go abroad;

In *Satwant Singh v. Assistant Passport officer, New Delhi*¹⁴, in *Maneka Gandhi v. Union of India*¹⁵ apex court held that right to travel abroad was part of a person’s liberty within the meaning of Art.21 and it should be curtailed only basing on just, reasonable and fair legal ground. Court also held that if there is a situation arose to curtail or limit it should be done only after providing reasonable opportunity to person simply PNJ has to be followed. Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice.

b) Right to live with human dignity;

In *Maneka Gandhi’s*¹⁶ case the court gave a new dimension to Art.21 and held that the right to ‘live’ is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. And then elaborating the same view the court in *Francis Coralie v. Union Territory of Delhi*¹⁷, held that right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to ‘live’ is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes “the right to live with human dignity”, and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and comingling with fellow human being.

Similarly, in *Consumer Education and Research Centre & Ors. v. Union of India & Ors*¹⁸, the Supreme Court was moved by human tragedy of modern industry; economic waste and health hazards on account of occupational accidents and diseases. The Supreme Court, while referring

¹³ AIR 1978 SC 597

¹⁴ *Satwant Singh v. Assistant Passport officer, New Delhi*, AIR 1967 SC 1836.

¹⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹⁷ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746.

¹⁸ *Consumer Education and Research Centre & Ors. v. Union of India & Ors* AIR 1995 SC 922.

to a number of decisions, held that the right to life with human dignity encompasses within its fold some of the finer facets of human civilization which make life worth living. The right to health for a worker is an integral facet of meaningful right to life to have not only a meaningful existence, but also robust health and vigor, without which a worker would lead a miserable life.

c) Right to get minimum wage for work;

In *Peoples Union for Democratic Rights v. Union of India*¹⁹, court held that non-payment of minimum wages to the workers employed was a denial of their right to live with basic human dignity. Bhagawati, J speaking for the majority held that the rights and benefits conferred on the workmen under various labour laws are clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights or benefits that would clearly be a violation of basic human right and Art.21 also. For there In *Deena v. Union of India*²⁰, in this case court held that the prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.

Like above court held that having minimum wage, the health and strength of the worker is an integral facet of the right to life. Denial thereof deprives the workman of the finer facets of life, violating Article 21 of the Constitution. The Supreme Court emphasized that the right to human dignity, development and personality, social protection, and the right to rest and leisure are fundamental human rights to a workman. These are assured by the Charter of Human Rights, in the Preamble and Article 38 and 39 of the Constitution.

d) Right to Earn a Livelihood;

In *Olga Tellis et. al. v. Bombay Municipal Corporation*²¹ apex court held that “the question which we have to consider is whether the right to live includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right of life conferred by Article 21 of the Constitution is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right of life. An equally important facet of that right is the right to livelihood, because no person can live without the means of living – that is the means of livelihood. If the right to livelihood is not treated as a part of livelihood to the point of abrogation, such deprivation would not only denude the life of its effective content and meaningfulness, but it would make life impossible

¹⁹ Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

²⁰ Deena v. Union of India, AIR 1983 SC 1155.

²¹ Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC 180)

to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life’.

e) Right to Health care or Doctor’s assistance²²;

In *Parmanand Katara* case court held that there can be no second opinion that preservation of human life is of paramount importance. In case of accidents injured should be given immediate medical aid to preserve life, and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent deaths. That is so because once a life is lost, the status quo ante cannot be restored, as resurrection is beyond the capacity of man. A doctor at the Government hospital positioned to meet this State obligation is therefore duty bound to extend medical assistance for preserving life. Every doctor, whether at a government hospital or otherwise has the professional obligation to extend services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure, whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give away. The Supreme Court had directed that this decision be published in all journals and adequate publicity be given to it. Unfortunately, even as of this date, a substantial number of doctors, hospitals, police personnel and lay people are totally unaware of it.

f) Right against Handcuffing²³;

In *Prem Shankar* case Supreme Court held that “Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict ‘irons’ is to resort to zoological strategies repugnant to Art. 21.....”

g) Right Against Solitary Confinement²⁴;

In *Sunit Batra (No. 1) v. Delhi Administration*, the Supreme Court held that even a prisoner has liberty to move, mix, mingle, talk, share company with co-prisoners it should not be curtailed without proper law. If in the name of solitary confinement there is total deprivation of

²² *Parmanaand Katr v. Union of India* SCC 1989 (4) p. 286

²³ *Prem Shankar v Delhi Administration*, AIR 1980 SC 1535.

²⁴ *Sunil Batra v. Delhi Adm.* (1 1978 SC. 1675), *Sher Singh v. State of Punjab*, AIR 1983 SC

friendship amongst co-prisoners comingling and taking and being talked to, it would offend basic human right and violative of Art.21.

h) Non-citizens also entitled to right to life

In a landmark judgment in *National Human Rights Commission v. State of Arunachal Pradesh*²⁵, the highest court of India held that the State is bound to protect the life and liberty of every human being whether they are citizen or non-citizens.

i) Right to education

In *Mohini Jain v. State of Karnataka*²⁶, their Lordships declared that unless there is right to education a person cannot enjoy the fundamental right to speech and expression in full so the education in India has never been a commodity for sale. Later in *Unnikrishnan Case*²⁷ court declared that the children of the age of 6 to 14 has right to education as fundamental right. After that by 86th Amendment Act, 2002 Art.21A was inserted to made education for all children of the age of 6 to 14 as free and compulsory.

The above list is simply illustrative and by no means exhaustive. There are so many other issues which are so connected with human rights recognized by Indian judiciary as fundamental rights. They are as follows:

- j) Right to Privacy²⁸;
- k) Right Against Bar Fetters²⁹;
- l) Right to free legal Aid in criminal trial³⁰;
- m) Right to Speedy Trial³¹;
- n) Right Against delayed execution³²;
- o) Right Against custodial violence³³;
- p) Right Against Public Hanging³⁴;
- q) Right to shelter³⁵;
- r) Right to know;

²⁵ *National Human Rights Commission v. State of Arunachal Pradesh*, 1996 1 SCC 742.

²⁶ *Mohini Jain v. State of Karnataka*, 1992 (3) SCC 666

²⁷ *Unni Krishnan v. State of A.P.*, 1993 (1) SCC 645.

²⁸ *R. Rajagopa v. State of Tamil Nadu*, 1994 (6) SCC 632. And *PUCL v. Union of India*, AIR 1997 SC 568.

²⁹ *Charles Shobraj v. Supp. Central Jail* 1979.

³⁰ *Hoskot v. State of Maharashtra* AIR 1978 SC 1548 . *Hussain Arra v. Home secretary* AIR 1979 SC 1369, *Sukhdas v. arunachal Pradesh* , AIR 1986 SC 991.

³¹ *State of H.P. v. Raja Mahindra Pal*, AIR 1999 SC 1786.

³² *Jved Ahmed v. State of Maharashtra* , AIR 1985 SC 231

³³ *Sheela v. Union of India* , AIR 1986 SC 1773

³⁴ *AG of India v. Lachma Devi*, AIR 1985 SC 467

³⁵ *Chameli Singh v. State of UP*, AIR 1996 SC 1051.

- s) Right to compensation;
- t) Right to Release and Rehabilitation of Bonded Labour;
- u) Right Against Cruel and Unusual Punishment;
- v) Right to food and water;
- w) Right to have clean, green and pollution free environment³⁶;
- x) Right of Inmates of Protective Homes.

Besides, the declaration of above rights within the expanding ambit of Article 21, this article has been applied in various fields such as Drugs; Hazardous Chemicals; Insane Persons; Passports; Atomic Energy Radiation; Forests etc.

Like above Indian judiciary has been recognizing numerous human rights by enhancing the scope of Art.21 to prove and promote justice to people. In fact the rights under Art.21 are greater than that of UDHR, Why because there is a doubt regarding binding nature of UDHR proclamation. Unlike the Universal Declaration of Human Rights, Fundamental Rights enshrined in Part III of the Constitution are not only binding, they are also enforceable through the Courts of law that to Art.21 cannot be suspended even during emergency.

More over human Rights in Indian Constitution can be found in the Preamble of the Constitution of India, Part III of the Constitution on Fundamental Rights and Part IV of the Constitution on Directive Principles, which together have been described as forming the core of the Constitution which together reflect the basic principles of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, and Part IVA of the Constitution on Fundamental Duties, Articles 300A, 325 and 326 etc.

The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or willfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitized to play an important role in securing rights of the people.

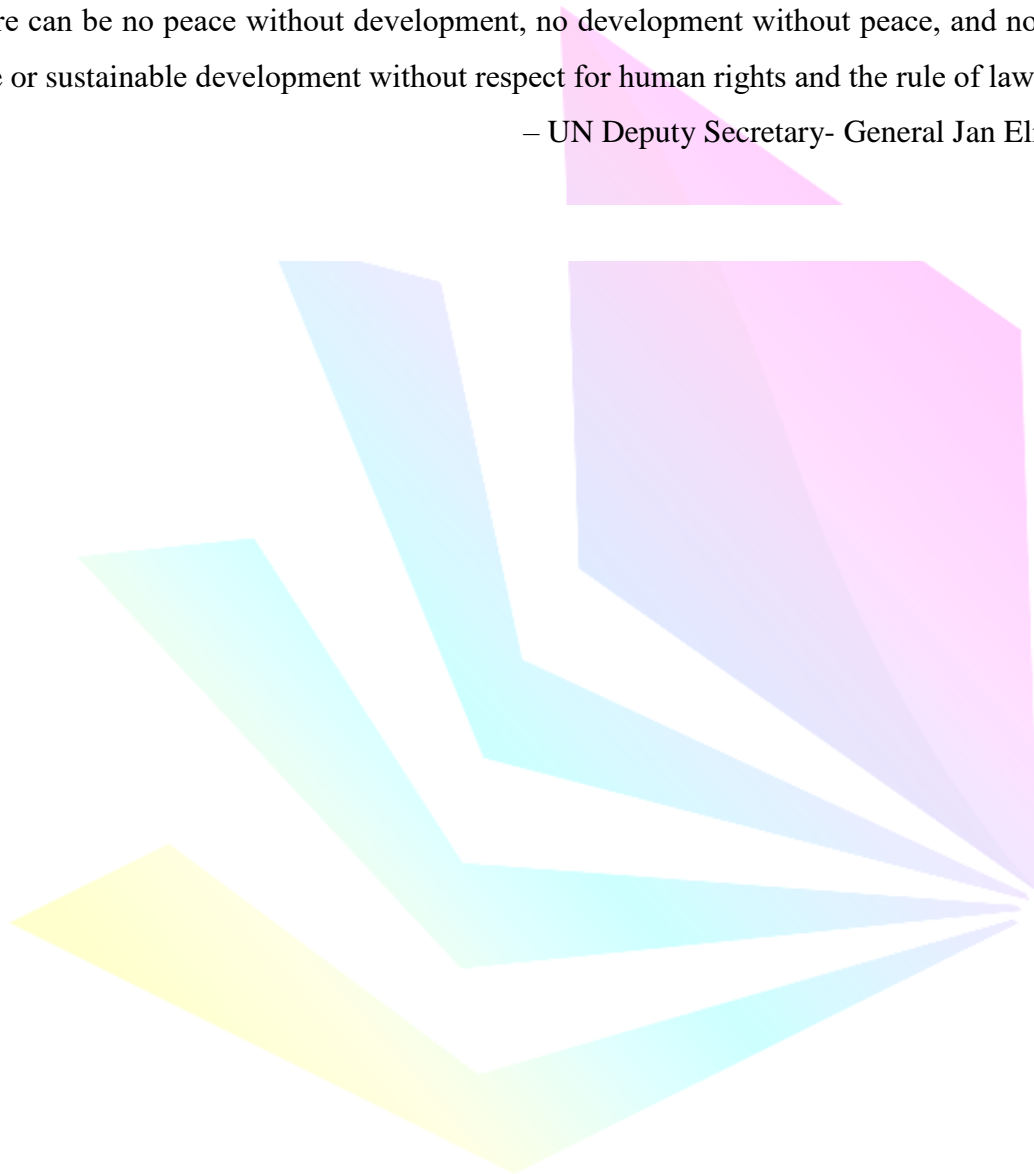
Finally, it would not be wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is equally important

³⁶ Doon Valley Case (AIR 1985 SC 652), M. C. Mehta v. Union of India (AIR 1988 SC 1037), Oleum Gas Leak Case (AIR 1986 SC),

that the Indian society at large, including the political elite, both civil and police administration, the media, NGOs, civil society and intellectuals who yield influence in moulding the opinion in the society should have proper approach and attitude towards the protection of human rights. Each and every one in the society has the role to play an important role in securing human rights of the people.

“There can be no peace without development, no development without peace, and no lasting peace or sustainable development without respect for human rights and the rule of law.”

– UN Deputy Secretary- General Jan Eliasson³⁷



³⁷ Available online at : <http://unfoundationblog.org/11-top-quotes-on-human-rights/>