

EVOLUTION OF DIFFERENTIATED VIEWS ON THE RIGHTS OF HUMANS AND OTHER LIVING CREATURES AND THE IMPLICATIONS FOR ENVIRONMENTAL JURISPRUDENCE

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ABSTRACT

Urbanization, industrialization, and the pressure from escalating population have overburdened our resource-base and ecosystems. It is not surprising that the concurrent degradation of ecology and environment in urban and peri-urban regions witnessed in India in the recent times has resulted in rather worrisome condition of the forests, rivers, lakes, desertification, pollution of soils and aquifers, ambient air quality and many such irreversible impacts including the loss of bio-diversity, ozone hole and global climate change. In this context, the dynamics between science and technology for practicing the so-called preventive environmental management, instituting cleaner and sustainable alternatives in “smart cities and villages”, promoting industries to invest in cleaner technologies and waste minimization, practicing recycling and reuse of water, solvents, metals, glass, paper and wastes generated by industries need to be brought under the ambit of “circular economy”.

India has been the signatory for the so-called “Millennium Development Goals” – which emphasize the just and equitable development in the World – being implemented during 1st January 2001 and 31st December, 2015 under the umbrella of the United Nations. It is recognized worldwide now that the commitment to “sustainable development” can only be implemented through the administrative law and executive procedures as well as by involving the civil society, non-governmental organizations (NGOs) and community-based organizations (CBOs) in supervisory and watch-dog capacity.

The flip-side of the above argument is also argued in this paper. This research examines the proposition that unless the Governments and civil society share the responsibility of balancing the rights of all citizens and the rights of other living creatures; a long-term path to evolving the just and happy communities will remain an unfulfilled prophecy.

In this context, it is **hypothesised** in this study that the mission of creating a just and democratic nation envisaged in India's Constitution can be fulfilled only when the Government of India, the *State* Governments and civil society share the responsibility of balancing the rights of all citizens and the rights of other living creatures. Accordingly, based on the above hypothesis, the following **specific objectives** have been articulated for this study:

1. To critically study, understand, and assess the notion of "rights" adopted by the Constitutions of India, Europe and USA,
2. To critically study, understand, and assess the notion of "rights of the other living creatures, ecosystems and habitats" adopted by the Constitutions of India, Europe and USA,
3. To critically examine the constitutional basis for preservation of biodiversity; and
4. To critically examine the "environment *verses* development" debate in the context newly developed concepts of "Pre-Habilitation" and "Compensatory Pre-Afforestation" for achieving a balance between development and environment.

In this research, efforts have been made to identify and highlight those case examples and case studies, nationally as well as internationally, that can potentially become the role models for fashioning India's Rights-based approach in law and public policy in favour of strengthening the Constitutional rights of those who are the silent sufferers of rights being exploited by humans.

Keywords: Human Rights, Environmental Implications, Preventive Environmental Management, Sustainable Development, Administrative Law, Executive Procedures, Pre-Habilitation, Compensatory Pre-Afforestation, Welfare State.

INTRODUCTION

It is understood that humans are not the only species who shall enjoy their rights. The Constitution by its very nature imposes certain limitations on these rights and prescribes duties upon those who seek to enjoy these rights. It is believed that humans have the duty to respect the rights not only of other humans, but also those of non-human species, and the environment, and the natural ecosystem. The new philosophies, theories, studies, and activism has proposed that the natural flora, fauna, seas, rivers, oceans, forests, *etc*, have the equal right to enjoy their liberty and free space, and any form of intrusion is not encouraged just as we humans like to dwell in our free space.

While we enjoy our rights, we should remember that advocates for natural rights have time and again, warned about the implications of human interference with the environment. The environment *verses* development debate is everlasting, and it has to be borne in mind that while opposing development is not the solution, it is equally harmful to promote development at the cost of the environment.

The unprecedented number of people have been migrating to urban centres throughout India in the recent past in search of work and opportunities – which has led to the mindless encroachment upon the habitats and traditional livelihoods of tribal communities, deep and remote rural population, artisans and nomadic communities in India. No need to emphasize the concurrent degradation of ecology and environment in urban and peri-urban regions witnessed in India in the recent times – which has resulted in rather worrisome condition of the forests, rivers, lakes, desertification, pollution of soils and aquifers, ambient air quality and many such irreversible impacts including the loss of bio-diversity, ozone hole and global climate change.

THE HYPOTHESIS

In this context, the academics, domain experts and public intellectuals have recently articulated their positions on the dynamics between science and technology for practicing the so-called preventive environmental management ⁱ, instituting cleaner and sustainable alternatives in

“smart cities and villages”, promoting industries to invest in cleaner technologies and waste minimization, practicing recycling and reuse of water, solvents, metals, glass, paper and wastes generated by industries by converting them into value-added products.

India has been the signatory for the so-called “Millennium Development Goals” (implemented during 1st January 2001 and 31st December, 2015) as well as the currently implemented “Sustainable Development Goals” put forth by the United Nations (implementation planned for 1st January 2016 through 31st December, 2030). It is understood now that the commitment to “sustainable development” can only be implemented through the administrative law and executive procedures as well as by involving the civil society, non-governmental organizations (NGOs) and community-based organizations (CBOs) in supervisory and watch-dog capacityⁱⁱ.

The flip-side of the above argument is elaborated in this paper. It is important to recognize that the race for achieving the so-called “sustainable development” or “integrated development” or “inclusive growth” could simply amount to chasing a mirage! It is argued in this paper that unless the Governments and civil society share the responsibility of balancing the rights of all citizens and the rights of other living creatures; a long-term path to evolving the just and happy communities will remain an unfulfilled prophecy.

In this context, it is **hypothesised** in this study that the mission of creating a just and democratic nation envisaged in India’s Constitution can be fulfilled only when the Government of India, the *State* Governments and civil society share the responsibility of balancing the rights of all citizens and the rights of other living creatures.

In this research, efforts have been made to identify and highlight those case examples and case studies, nationally as well as internationally, that can potentially become the role models for fashioning India’s Rights-based approach in law and public policy in favour of strengthening the Constitutional rights of those who are the silent sufferers of rights being exploited by humans.

THE NOTION OF “RIGHTS” THROUGH THE HUMAN HISTORY

The evolution and metamorphosis of the notion of “Rights” has been on the minds of humans since time immemorial. The first known aboriginals, the *Homo sapiens sapiens*, fought for their rights in their own way while unwittingly evolving the concept through thousands of years of the evolutionary process. Though primitive and natal, the right to shelter, right to food, right to be protected from enemies, right to form an association amongst those sharing similar land, culture, tradition, *etc*, became the important functional aspect of their day-to-day community living. Eventually, it got codified and even became their culture in the course of the evolution of the thought to concept to the philosophy. In the modern developed world, we often refer to the dictum, “live and let live”.

With time, these “notional rights” proliferated into several different rights, each having its own unique characteristic and power. With the introduction of the idea of “Constitutionalism” and a legal document called the “Constitution”, these rights were introduced as a core part of the Constitution, binding the State to abide and respect these basic rights as being fundamental and necessary for human existence. The existence of all humans, irrespective of any distinction and differentiation, rests upon the guarantee of these rights. Similarly, it is also important for humans, with the changing times, to incorporate new philosophies and ideas into the realm of rights.

A State is defined under the International Law as “an independent political entity, occupying a defined territory, the members of which are united together for a common purpose resisting external force and preserving internal order”ⁱⁱⁱ. The State as an entity has to function to protect its members from any kind of external aggression, as well as internal turmoil. However, in order for the State to ensure that it functions to fulfil its objectives, it is important that the State does not act in an arbitrary, random, and indiscriminate manner. The State has certain “police functions”, to preserve the law and order, and to defend its people from external aggression and attacks.

A State shall function as a “social welfare State”. It has to establish its basic organs and wings to function efficiently while ensuring that there is separation of power, which ensures that the State does not become autocratic and undemocratic. To ensure that the organs of the State

function within their limits, it is important to understand the Constitution, which oversees the functionality of the State and its respective organs.

The Constitution of a country seeks to establish its fundamental, basic, or the apex organs of the government and the administration, describe their structure, composition, powers, and the principal functions, define their inter-relationship, and also regulate their relationship with the people, and more particularly, the political relationship^{iv}. A Constitution is thus a unique legal document which enshrines a special kind of a norm and stands at the top of the normative pyramid. It directs the human behaviour for years to come, shaping the appearance of the State and its aspiration throughout the history. It is the document that determines the State's fundamental political views, laying down its social values^v.

WHAT ARE THE RIGHTS IN THE INDIAN CONSTITUTION?

Constitution thus refers to a document that has a legal sanctity setting out a framework and the principal functions of the instrumentalities of the State and the principles that govern the functioning and the working of these organs of the State. Part III of the Indian Constitution deals extensively with the Fundamental Rights (Articles 12 to 35), hereinafter referred to as "Rights". This Part of the Constitution is described as the *Magna Carta* of the Indian Constitution^{vi}. This Part III was included in the Constitution to safeguard and to preserve the democratic thought of the country, to preserve the indispensable condition of the free society. The aim of having this Part in the Constitution is that certain elementary rights, such as the right to life, liberty, freedom of speech, freedom of faith, etc, should be regarded as inviolable under all conditions and that the shifting majority in the legislature of the country should not have a free hand in interfering with these fundamental rights^{vii}.

On a comparative note, Justice Jackson in the case of *West Virginia State Board of Education v Barnet*^{viii}, explained the nature and the purpose of the Bill of Rights by observing that, "The very purpose of the Bill of Right was to withdraw certain subjects from the vicissitudes of political controversies, to place them beyond the reach of the majority and the officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty, and

property, to free speech, free press, etc, may not be submitted to vote, and they do not depend on the outcome of any election”.

Thus, these rights are deemed to be protective of the liberty of every individual against any encroachment or infringement of power delegated to the government or its related organs. These rights limit the powers of the government and are thus essential for the preservation of private as well as the public rights.

These are the most essential rights for attaining full intellectual, moral, and spiritual status. The inclusion of Part III in the Constitution shall serve as a constant reminder to the government of the limits imposed on their powers, and to respect and protect the liberty assured and guaranteed to all individuals. The inclusion of this Part ensures a “*government of law*” and not a “*government of man*”. Thus, this Part ensures that a standard of conduct, citizenship, justice, and fair play is maintained.

These rights are fundamental in nature because they are available against the State and not against any private individual. Private grievances are adequately dealt by the ordinary laws of the country. These rights are thus the basic human rights of all individuals. These rights, defined in Part III of the Constitution, are applied irrespective of race, place of birth, religion, caste, creed, gender, and equality of opportunity in matters of employment. They are enforceable by the courts, subject to specific restrictions.

The Indian Constitution is an umbrella encompassing various rights guaranteed to the citizens of India. However, the Constitution by itself is a handmade product sewn from different threads, i.e., the Constitution of India is a document which is prepared by interpreting the provisions of different Constitutions and related provisions from all across the world. The framers of our Constitution were particularly vigilant in including all those provisions which they deemed would be perfect for the Indian socio-political and cultural set up.

The Indian Constitutional history dates back to the English colonial era. Much of the Indian Constitution has been inspired from various sources. The English Bill of Rights (1689), US Bill of Rights (1791), and the France’s Declaration of the Rights of Man (1789) are few sources to whom credit can be attributed. The following **Table 1** gives the list of all the Rights that are

guaranteed to the individual by the Indian Constitution, which are enforceable against the State through the machinery of the Courts:



Table 1: The Fundamental Rights Guaranteed under Indian Constitution

Sr No	Fundamental Right	Description and Comment
1	Article 12: Definition of State.	Article 12 by itself is not a fundamental right. However, it defines the term “State”, thereby mentioning the instrumentalities against whom the rights are enforceable.
2	Article 13: Laws that are inconsistent and derogatory to the fundamental rights are considered void.	Article 13 provides for protection to all individuals from any infringement of their fundamental rights by the State as defined in Article 12, or any of the State instrumentalities by declaring that any law that is inconsistent with the Part III of the Constitution, or such law that infringes or violates these basic rights as being null and void.
3	Article 14: Equality before the law.	Article 14 marks the beginning of what we interpret as the “golden triangle” in the Indian Constitution. This Article provides for equality before the law and the equal protection before the law. This Article speaks about what the Constitution framers regarded as the “eagle’s eye”, allowing each individual the liberty to be equal in the eyes of the law.
4	Article 15: Prohibition of Discrimination.	Article 15 deals comprehensively with all forms of discrimination, and aptly prohibits such acts of discrimination. It includes religion, caste, sex, race, or even the place of one’s birth. It shall be the duty of the State to ensure that such discrimination is prohibited at all places.
5	Article 16: Equal opportunity in matters of public employment.	Article 16 protects the individual from discrimination in matters that are related to public employment and are governed by the State. The purpose of including this Article under the Constitution is to ensure that the State maintains parity and equality in crucial matters such as employment and wages.
6	Article 17: Abolition of Untouchability.	Untouchability has been abolished in India and any such practise in essence or in its form is punishable.
7	Article 18: Abolition of Titles.	This Article provides that no Indian citizen shall accept any title that has been conferred on to him by a foreign State. The purpose behind including this Article as being part of the Constitution is to ensure that the British Colonial system of conferring titles based on the class system is done away with.

Sr No	Fundamental Right	Description and Comment
8	Article 19: Protecting the Freedom of Speech.	Article 19 is the most comprehensively written Article amongst the fundamental rights in the Indian Constitution. This Article deals with the six freedoms guaranteed to free speech. This Article also encompasses a variety of judicially interpreted rights being implied part and parcel of Article 19. Such implied rights include the Right to Freedom of Press, Freedom not to be heard, Freedom of being heard, etc.
9	Article 20: Protection in respect of conviction in offences.	Article 20 is based on the principle of “ <i>innocent until found guilty</i> ”. Thus, this Article is premised on the fact that every individual has the right to be convicted for any offence only in accordance with the law and not to be subjected to any penalty greater in amount to what is prescribed under the law. It also deals with the concept of “double jeopardy” under the Criminal Jurisprudence and provides protection from being a witness to one’s own cause and peril.
10	Article 21: Protection of Life and Personal Liberty.	This Article is the most revered Article under the Constitution, which encompasses and includes a variety of other rights. This Article is a blanket Article which has been extensively interpreted by the judiciary time and again to include a variety of different rights that are deemed essential and indispensable part of one’s life and liberty.
11	Article 21A: Right to Education.	Education was previously a part of the Part IV of the Indian Constitution. However, it was later included under Part III by the Constitution (86 th Amendment) Act, 2002. The Article provides for free and compulsory education to all children who are between six and fourteen years of age. It is the responsibility of the State to ensure that all children between the above-mentioned age group receive the proper and adequate education at the expense of the State.
12	Article 22: Protection from arrest and detention.	Article 22 was previously Draft Article 15 in the Constituent Assembly Debate. It provides for informing the accused the reason of his arrest and detention, and to be consulted and defended by a legal practitioner. This Article is an extension of Article 21 and provides for the production of the accused before the nearest Magistrate within 24 hours, in order to be released if the Magistrate does not find any case against him, or on bail, if the Magistrate deems fit.

Sr No	Fundamental Right	Description and Comment
13	Article 23: Prohibition of human trafficking.	Traffic of human beings and beggar is prohibited in order to ensure that all individuals are guaranteed liberty, dignity, and respect under the Indian Constitution. This Article is thus not just enforceable against the State, but also against private individuals.
14	Article 24: Prohibition of employment of children in factories.	This Article protects children who are below fourteen years of age from being employed in factories and other units of hazardous work. It is in tune with the WHO guidelines which has defined the “tender age” of a child as being up to fourteen years.
15	Article 25: Freedom of conscience and to profess and practise one’s religion.	This Article was particularly important from the Indian socio-political and cultural point of view. Upon independence, the Indian society was divided and cohabitated by people of various sects, religion, caste, etc. It was therefore imperative for the Constitutional framers to include an Article which provided the freedom and the liberty to follow, and also to propagate and profess religion of one’s own choice.
16	Article 26: Freedom to manage religious affairs.	In consonance with the above Article, this Article too provides for establishing and maintaining religious and charitable institutions, and manage affairs related to one’s religion, and to administer, own, and acquire property, without the interference of the State.
17	Article 27: Freedom from paying any taxes to promote religion.	No taxes are levied by the State against any person who is promoting and propagating, professing his own religion and ideologies.
18	Article 28: Freedom to attend religious instructions at any educational institute.	Those educational institutes that are maintained by the State shall not be imparting any religious instructions. However, institutes that are administered by the State but are established under any endowment or trust requiring religious instructions to be imparted shall be allowed to do so.
19	Article 29: Protecting the Minority interests.	Article 29 defines who a minority is. Accordingly, any section of citizens who are residing in India and having a distinct language, script, or culture of their own shall be regarded as being minorities. These minority communities shall have the rights to maintain and to preserve their own language, script, and culture.

Sr No	Fundamental Right	Description and Comment
		It is also provided under this Article that the State shall not make any discrimination while admitting class of citizens from the minority to any educational institute maintained by the State.
20	Article 30: Rights of the minority to establish and administer their own educational institutes.	Minority based on religion or language shall have the right to establish and administer educational institutes of their choice. At the same time, the State shall ensure while giving grants and aids that such minority institutes are not discriminated against.
21	Article 32: Remedies provided for enforcing these fundamental rights.	According to Dr B.R Ambedkar, Article 32 is the “heart” and “soul” of the Indian Constitution. If there is not machinery and instrumentality to enforce the Constitutional remedies, the Part III of the Constitution shall be meaningless and merely a puppet show. Article 32 thus provides the right to move to the Supreme Court by appropriate proceedings for enforcing the rights guaranteed.
22	Articles 33, 34, and 35	These three Articles in the Constitution deals with the powers of the Parliament to modify and amend the rights conferred by Part III, and at the same time it provides that the Parliament has the responsibility to give effect to the provisions in this Part.

THE EXCLUSION OF THE DUTIES UNDER THE ORIGINAL CONSTITUTION

Finally, one would ask, *why have the framers of our Constitution not articulated the duties of Indian citizens in our Constitution?* The answer lies in the conspicuous absence of the so-called duties by the authors of our Constitution! It should be remembered and noted that the right-duty correlation goes deeper than just mere inclusions of words in the text of any legal document. One simple reason why our great thinkers and framers did not include any specific duties as part of our Constitution is because rights and duties often go together and are *two different sides of the same coin*.

If the Constitution guarantees a particular right to any individual, it also imposes certain restriction, obligation, and duty not to infringe the rights of other individual. For example, if the Constitution guarantees an individual with the right to live, it also obliges him not to expose himself to danger, and at the same time, not to expose the life of others to threat and danger. Thus, the right-duty correlative is implied as being a give and take relationship.

Mahatma Gandhi had very aptly described the right-duty correlative. According to him, “a duty well performed creates a corresponding right”. Mahatma Gandhi was a firm believer in “real rights as being a result of the performance of duty”. Every individual has the duty to respect the rights of others, while enjoying one’s own. This is particularly important in order to maintain a peaceful society and order.

These duties are owed to an individual as well as the State. In a modern Constitutional democracy, the rights have to be supported by the duties of the citizens as well as by those of the State^{ix}. Thus, the right guaranteed to one can be enjoyed only when the corresponding duty is observed. When people fail to observe their duties, the rights become meaningless. The rights guaranteed are not exclusive to any one particular individual but are in essence equal for all the individuals.

In his *Theory of Rights*, Professor Harold Laski has rightly pointed out that “one man’s right is also his duty”. His most attractive work is his Functional Theory of Rights, whereby Laski stresses that an individual can only claim enjoyment to his rights if he performs the duties^x. He further opines that the performance of one’s duties entitles the individual to claim his right and the State is bound to respect the rights guaranteed to such an individual.

However, Laski also points out that the individual must perform his duty which shall be in the best interest of the society. The duty performed should be such that the general welfare of the State is related. “Recognition of rights has a relation to the recognition of the services to the enrichment of state”^{xi}.

Laski’s theory stems out from the idea that “rights emerge from the society”. Hence, for Laski, an individual has the duty to respect the rights of all in the society, and not of his own. For Laski, the duty should be concentrated towards promoting the general interest in the society.

Thus, according to Laski, an individual has the responsibility to focus on their duties in order to enhance their own right as well as those of others.

WHAT ARE THE “RIGHTS” IN ESSENCE AND ARE THERE ANY LIMITS IMPOSED ON THEM?

No Constitution in the world has ever enshrined and critically expressed the essence of the “rights” that are guaranteed to the citizens and non-citizens. These rights have their essence hidden in the instrumentalities that often safeguard these rights as being paramount and indispensable for individual liberty and freedom.

The famous French comedian Michel Colucci had once remarked that, “God is like sugar in hot milk, everywhere but invisible; and the more you search for him the less you find him”^{xii}. The very same is applicable and pertinent to the concept of rights as well. Thus, we can aptly say that the rights are ever applicable and present, although its express mention may not always be necessary.

The very essence of such rights first emerged in the case of Belgium Linguistic Case in 1968^{xiii} wherein the European Commission on Human Rights (ECHR) held that the right to education guaranteed by the Article 2 of the Protocol by its very nature calls for the regulation by the State, which may vary according to the time and place, and according to the needs and resources of the community.

A legal right is in its essence a right that is guaranteed to an individual, and which permits the individual to enjoy the right within the framework of the law. A right has to be enjoyed by the individual within the boundaries set by the Constitution and by the law as enacted by the Parliament and interpreted by the judiciary from time to time. However, this being said, it is also important that we discuss the limitations and restrictions that are imposed upon the enjoyment of these rights.

Fundamental rights have to be limited or restricted in order for a peaceful co-existence. One can imagine the situation when all individuals assert their own rights in an unlimited and

unrestrained manner, without respecting or acknowledging the rights of the others. This would lead to nothing but anarchy and social chaos and turmoil for establishing the supremacy of one's rights. It becomes imperative in such situations that the rights guaranteed to individuals are limited and restrained in order to ensure that each one is allowed to enjoy their rights in a lawful manner and within each person's own boundaries.

The Indian Constitution too, like other similar democratic Constitutions, enforces certain limits and liabilities upon the enjoyment of each individual's rights. The Constitution provides for these restrictions and limitations under Part III of the Constitution itself, implying that every right guaranteed to the individual comes with certain inherent limitation imposed. This may also be called as the "implied limitations" on fundamental rights. According to this theory, the only permissible legal limitations on the rights of humans are those necessary for their existence as a whole^{xiv}. Thus, when a certain limitation has been imposed on any right, it has to ensure that a collective existence of all the rights is ensured. However, that being said, it must also be ensured that such restrictions and limitations do not, in any way, restrict the enjoyment of fundamental rights. A healthy balance must be struck between the enjoyment and the limitations imposed on the rights.

Philosopher John Stuart Mill, in his work titled "*On Liberty*", speaks about when a right may be limited and what could be the permissible limitation. According to Mill, "The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his body and mind, the individual is sovereign^{xv}."

The importance of imposing limitations and restrictions is also seen under the Indian Constitution which imposes inherent restrictions upon the enjoyment of fundamental rights. These fundamental rights are not absolute and can be restricted by the law made by the Parliament, *by the procedure established by law*. No right can be infringed arbitrarily and requires the valid legal sanctions to be limiting the rights of an individual. **Table 2** gives the list of rights and the limitations that are imposed by the Indian Constitution on its enjoyment:

Table 2: Limitations imposed on the enjoyment of Rights under the Constitution

Sr No	Fundamental Right	Limitation/Restriction
1	Article 12: State.	A limited is imposed upon the interpretation of the definition of the term “State”. It provides for a strict definition of the term State, unless the context otherwise requires, thereby expressing exclusive definition of the term State under the Constitution.
2	Article 13: Inconsistency of the laws.	This Article imposes a clear restriction on the Parliament and the State Legislature on enacting such legislation that shall abridges any fundamental right guaranteed by the Constitution. It also states that all the laws that were in force before the Constitution commenced shall be declared as being void in cases where they are inconsistent with Part III of the Constitution.
3	Article 14: Equality before the law.	This Article is limited by various interpretation of the Courts. Article 14 would only apply when discrimination occurs between equals and similarly situated people without any rational basis. It thus negates the scope of application of the Article in cases where discrimination occurs between two individuals who hail from a different strata and are standing on different footings.
3	Article 15: Prohibition of Discrimination on grounds of religion, race, caste, sex, or place of birth.	The Article by itself provides an exclusive definition by including the word “only” in its clauses. Article 15 (1) and (2) uses the word “only” to highlight the prohibition on the discrimination. It thus makes it a deadlock to interpret and assert other forms of discriminations meted out to individuals.
4	Article 19: Rights regarding freedom of speech.	Article 19 (2) to (6) imposes “reasonable restrictions” on the freedoms guaranteed under Article 19 (1) (a) to (g). Sovereignty, security of the State, public order, decency, morality, and contempt of court are some of the restrictions imposed on the enjoyment of Article 19 (1).
5	Article 21: Life and Liberty	An important Article as Article 21 guaranteeing the right to life and liberty also has certain inherent limitations.

Sr No	Fundamental Right	Limitation/Restriction
		This Article also suggests the possibility of deprivation of individual's life and personal liberty if it is according to the procedure established by the law.
6	Article 22: Protection against arrest and detention.	Article 22 too is an offshoot of Article 21, which protects the individual from being arrested and detained arbitrarily. However, this Article is only applicable to an arrest made by a police officer and is not available against an order of the judiciary, thereby leaving scope for erroneous decisions by the Magistrates, acting as the first line of judicial recourse for the detainee.
7	Article 25: Freedom of conscience and to freely practice, profess, and propagate religion.	This Article has been subject to limitations by the Constitution in order to ensure that the greater public good is maintained and considered while the religion is practiced and propagated. The Article provides the freedom of conscience, and the freedom to profess, practice, and propagate religion subject to public order, morality, and health. It further restricts the right by allowing the State to make any regulation restricting the economic, financial, political, or other secular activities.
8	Article 33: Power of the Parliament to modify the rights conferred by Part III in their application to the Forces, etc.	The Parliament may, by law, determine to what extent any of the rights conferred by the Part III shall be applicable the armed forces, or any other bureau established under the State for the purposes of intelligence or counterintelligence.

DO THE LIMITS ON HUMAN RIGHTS PROTECT THE OTHER CREATURES ADEQUATELY?

One side of the coin argues that fundamental rights guaranteed to all individuals by the Constitution is paramount and cannot be abridged or infringed, except according to the law. This side argues that the rights of human beings is supreme and supersedes all other rights.

On the contrary, on the other side of the coin, many argue that imposing the restrictions and limitations on the rights that are guaranteed to an individual is imperative to strike a balance between the enjoyment of the rights, and also the discharge of duties towards other people, creatures, the natural environment, etc. The right that an individual enjoys always has a corresponding duty to protect the rights of others. Arbitrary and uncontrolled enjoyment of one's right shall lead to infringement of the rights of others.

We have to argue that the restrictions imposed upon the fundamental rights of an individual has had a positive impact in protecting the rights of other creatures, including the flora, fauna, aquatic and marine lifeline, etc. Often, in this growing days of industrialisation and urbanisation, the individual's claim and assertion over his right has left the situation of these mute species at stake.

The Directive Principles of State Policy enshrined under Part IV of the Indian Constitution directs the State to take measures towards protecting and improving the environment, and to protect and safeguard the wildlife of the country^{xvi}. It is the duty of the State to ensure that adequate protection is meted out towards the protection of the environment and the wildlife. This further implies that the State has to create a balance between the developmental goals, aspirations, and desires of the individual with the protection of the environment and the wildlife. The arbitrary and unrestrained enjoyment of the rights shall not be justified to the extent of injuring and harming the environment and other creatures dependent on a healthy and safe environment.

However, it should always be borne in mind that the restrictions imposed on the enjoyment of these rights shall be "reasonable" and cannot be excessive and blown out of proportion. Every creature has his own right to live free in his own territory and free space without interference and intrusion. It is therefore necessary that the restriction imposed should be catering to the needs of all at once. They should not be excessive to abridge the rights of the individual enjoying it, and at the same time, it should be reasonable enough so as to protect other speechless creatures, animals, wildlife, and the environment taken as a whole.

Along with the fundamental rights that are guaranteed by Part III, protection of wildlife is also enshrined in the Constitution as being one of the fundamental duties of individuals. Sections 428 and 429 of the IPC provides for punishment of all acts of cruelty such as killing, poisoning, maiming, or rendering useless of animals. Since the Constitution becomes the framework for

all the laws, it is also the document responsible for carving out the various restrictions that shall apply to the enjoyment of the rights, and the correlation of the right of an individual with that of other creatures under several legislations.

CRITICAL COMPARISON OF HUMAN RIGHTS VIS A VIS THE RIGHTS FOR OTHER CREATURES

It can be well said that since humans are considered to be a species of animals (mammals), the rights that guaranteed to us humans are a part and parcel of what we now know to be “animal rights”. However, many argue that humans and animal rights should be distinct and separate and should not be correlated by any means.

While the Constitution provides for the protection of the weaker and the less privileged section of the society, we have somewhere failed to recognize the vulnerability of the animals and the creatures who share the same environment and ecosystem as we humans do. The campaigners for animal rights and human rights share the same aim, and that is a world without oppression and suffering, based on love, kindness, and compassion. However, in today’s times, we see a growth of “speciesism”, which is the “belief and practice of human supremacism and the consequent abuse of other animal species”^{xvii}. Speciesism involves prejudice, discrimination, and violence in favour of human beings, and exploitation, incarceration, mistreatment or killing of other animals by humans.

Animals and creatures dependent upon the natural environment require rights and not just interest because rights command that they are respected. Rights are backed by sanctions which are imposed in cases they are violated. Thus, guaranteeing rights to such animals and creatures would imply that these rights are to be respected by us humans and violation would lead to punishment.

However, it is also true that human rights and the animal rights cannot be equated. Human rights and animal rights cannot be the same. Certain rights are irrelevant and inapt for the animals, such as the right to freedom of religion, right to education, right to free speech, etc. In a recent, Courts in Columbia and Argentina have granted the habeas corpus to apes and bear. The Indian Supreme Court too has granted the rights to animals under the Constitution^{xviii}. Unlike humans, animals do not need the right to free speech, or the right to religion, or equal

opportunity in matters of public employment, etc, they surely need the right to be protected from torture, right to live freely in their own habitat and free space, the right to be a legal personality, etc.

Animals have an intrinsic value as sentient beings. Thus, humans have a positive duty towards protecting the animals and maintaining their welfare and providing services for the animals. Animals and other creatures have to be treated in a similar way as humans would treat fellow humans. There is no justification to treat the animals in a substandard manner, asserting human dominance and claiming human rights over these animal rights. The statement shall get amply clear with the following example.

A human individual who is dwelling and living out of forest produce and forest ecosystem has no right to assert his claim and dominance over the forest ecosystem for his own selfish growth and developmental and sustenance needs. He may be allowed to cohabit along with the animals, creatures, forest flora and fauna, but by no means can he assert complete domination and claim his right over the forest ecosystem and his surrounding flora and fauna. This stems from the fact that every species has its own developmental zones, and these must be respected by every other species cohabiting under the ecosystem.

“Dominant groups have long justified their exercise of power over minorities or indigenous peoples by appealing to the ‘backward’ or ‘barbaric’ way they treat animals”^{xix}. Animal right activists view this kind of a behaviour as being against the popular notion of “culture” relied upon by those indulging in such inhuman acts. Time and again, the Courts in India have acknowledged the rights of animals to live a safe and healthy life is equally important to that of humans^{xx}.

THE NOTION OF RIGHTS UNDER THE CONSTITUTION OF THE USA

Every nation has its own legal document carved out to guarantee certain basic rights to ever citizen of the nation, without any discrimination, and more importantly, without being biased towards one particular community. These rights are provided to alleviate the standard of living of the citizens, under the guarantee that the State shall be responsible to respect these rights and ensure that a minimum standard of living is maintained and available to its citizens. Every

now and then, the Indian Constitution, which is a document of great reverence is compared to the Constitution of the developed nations, particularly the USA and the Britain Constitution.

The notion of rights in the USA consists of several rights that are protected by the Constitution of the USA and the State Constitutions, various legislations enacted by the USA Congress, State legislatures, and the State referenda^{xxixii}. The USA is generally given high to fair ranking in the human rights index by the Freedom House ranking system^{xxiii}. It also receives heavy International criticism for its systematic ignorance towards racial discrimination, weak labour class protection, police brutality, police corruption, mistreatment to prisoners, highest number of undertrial and juvenile prisoners, etc.

The most significant Bill of Rights of the USA, which comprises the first ten amendments to the USA Constitution, consists of a “mutually reinforcing guarantee of individual rights and the limitations on State and Federal governments”^{xxiv}. The origin and the source of the Bill of Rights is the Magna Carta, the English Bill of Rights. Thus, being a significant legal charter, the Bill of Rights has judicial enforceability and any action by the Congress to enact any legislation infringing the rights can be challenged before the US Supreme Court, to strike the legislation as being void. The Bill of Right of the USA is summarised under **Table 3**^{xxv}:

Table 3: The Rights guaranteed to the citizens of the USA under the Bill of Rights

Sr No	Amendment	Description of the Amendment
1	First Amendment	The First Amendment provides for certain civil liberties like the freedom to speech, freedom of press, free expression of ideas, the freedom to assemble peacefully, the right to practise any religion and also forbids the government from prescribing to any one religion, thus maintaining the secular nature of the USA Constitution.
2	Second Amendment	The Second Amendment to the Constitution protects the right of the individual to keep and bear arms for his own security and safety. It also speaks about a well maintained and regulated military for the defence and security of the State.

Sr No	Amendment	Description of the Amendment
3	Third Amendment	<p>This Amendment protects the individual's right to housing. It protects the individual from allowing and permitting the use of his own house to the soldiers and military forces for storing of arms and ammunitions.</p> <p>This Amendment did away with the British tradition of allowing the use of personal dwellings for military use during the times of war.</p>
4	Fourth Amendment	<p>This Amendment prevents the government from claiming governmental rights over private property of individuals. The government does not have the rights to claim property or claim search and seizure of any private property without any reasonable cause.</p>
5	Fifth Amendment	<p>This Amendment grants protection to a person accused of crime. It provides for a fair and free trial, protection against double jeopardy, protection against self-incrimination, and the right to have a fair compensation in lieu of seizure of property.</p>
6	Sixth Amendment	<p>This Amendment too provides additional protection to a person accused of crime. It provides for a right to speedy trial, an impartial trial, and the right to be informed at first instance of the crime. It also gives the accused the right to be represented by a legal counsellor of his choice in the Court of law.</p>
7	Seventh Amendment	<p>This Amendment settles the core principles of civil trials in the USA. It provides for a fair jury trial of civil litigations between two competing parties.</p> <p>Once the jury settles the claims, the case shall not be permitted to be argued again at a different trial.</p>
8	Eight Amendment	<p>This Amendment provides relief those poor and indigent persons accused in a crime. It bars and restricts an excessive bail amount and fine amount to be collected from those accused of crime. It also bars unusual and excessive and disproportionate punishments.</p>
9	Ninth Amendment	<p>The Ninth Amendment describes the concept of "implied rights" and states that the Bill of Rights is not exhaustive. An individual shall have recourse to other rights that are not mentioned in the Amendments. All persons shall have the recourse to the rights that are not specifically mentioned in the Constitution as well.</p>

Sr No	Amendment	Description of the Amendment
10	Tenth Amendment	<p>The Tenth Amendment lists the distribution of the powers between the federal and the state government. It further states that the federal government shall extend its powers to only those subjects that are listed under the Federal List.</p> <p>The USA Constitution is a State centric Constitution in the sense that it provides for more powers to the State than the Federal government. It provides that the powers that are not a part of lists mentioned in the Constitution shall vest with the State or the people, instead of the Federal government.</p>

THE NOTION OF RIGHTS UNDER THE ENGLISH CONSTITUTION

The English Bill of Rights in 1689 was a Charter that was signed into a law by William III and Mary II, who ruled England after King James II was overthrown. This Bill was particularly significant since it gave Constitutional and civil liberties to the individuals, ultimately paving way for Parliamentary supremacy over monarchy^{xxvi}. This English Bill of Rights created Constitutional supremacy in England, with the Kings and the Queens being the head, but their powers limited by the Constitution. People thus received their individual rights, and the monarchs were subject to the powers of the English Parliament, who supervised the powers of the monarch.

The Bill of Rights in England forms a major source and inspiration for all laws enacted by the English Parliament. Codification of laws in England is, however, rather recent. The main source of individual rights in England is the Human Rights Act of 1998. The Human Rights Act gives direct effect to the provisions of the European Convention on Human Rights and forms a major source of the British civil rights. The Act makes it unlawful for any public authority and body to act in a manner which is contrary to and infringing the rights that are prescribed in the Convention^{xxvii}.

Table 4 summarises and highlights the important fundamental and basic rights that are acknowledged by the British Constitution^{xxviii}:

Table 4: The fundamental Rights Guaranteed to Citizens under the English Constitution

Sr No	Right	Description and Comment
1	Right to liberty and fair trial.	Since the origins of the Magna Carta, the liberty of an individual from any form of domination, slavery, or servitude has been fundamental. Liberty can only be taken away lawfully by the “law of the land”.
2	Right to Privacy.	Sir Edward Coke in the year 1604 wrote that “the house of one is to him as his castle and fortress” ^{xxix} . This statement has been the basis of the right to privacy. Under the English Constitutional law, much focus has been placed on individual privacy and protection against trespass, police intrusions, technological privacy stemming from social media, etc.
3	Right to conscience and expression.	These rights are generally seen as being the “lifeblood of democracy” ^{xxx} . The English Bill of Rights also protects the right to free speech and expression under Article 9, and states that no law shall be enacted by the Parliament infringing the right to expression and speech. This right can only be limited on lawful grounds such as: <ul style="list-style-type: none"> • Unaccountable media ownership. • Censorship and obscenity laws. • Public order. • Laws of defamation and the breach of confidence.
4	Right to form an association and assemble peacefully.	These rights and fundamental freedoms are essential for the functioning of the democracy since they are the basis for all political organisation and dialogue. This right also include the peaceful joining of trade unions for protecting one’s interest. This right can be limited only on grounds of protecting the security, safety, and health of individuals.
5	Social and Economic rights.	These rights are umbrella rights that encompasses several other related rights. A few examples of the rights guaranteed under the above heading are: <ul style="list-style-type: none"> • Social Security, health, and medical facilities. • Right to education. • Share in scientific advancement and its benefits.

Sr No	Right	Description and Comment
		<ul style="list-style-type: none"> • Fair competition in the business market. • Encouraging development of personality.
6	Security and Intelligence.	A number of rights have been carved out of this provisions. It has also led to enactment of various legislations such as the Counterterrorism and Security Act, 2015, Protection of Freedom Act, 2012, Prevention of Terrorism Act, 2005, etc.

WHO SUPERSEDES HUMAN RIGHTS?

While we ascertain that the rights of humans should be absolute, the law does not recognise absolutism of human rights. Many argue that the human rights guaranteed and vested with all individuals by reason of them being humans is the most sacred right and has to be dealt with utmost importance.

However, quite often the debate around the absolutism of human rights leads to an abuse of these rights by individuals who claim their dominance over nature as well as the surrounding ecosystem. The concept of “conflicting rights” has thus been quoted by many who view the competing rights of “all” in general as being paramount.

Although the question of superseding the human rights is debatable, the only known debate is the debate on “conflicting rights” or “competing rights”. The Ontario Human Rights Commission has defined competing rights as “involving situations where parties to a dispute claim that the enjoyment of an individual or group’s human rights and freedoms, as protected by law, would interfere with another’s rights and freedoms. This complicates the normal approach to resolving a human rights dispute where only one side claims a human rights violation, but this claim conflicts with the with legal entitlements of other parties”^{xxxi}.

It is very pertinent to discuss about the rights of nature *vis-à-vis* the human right to nature. One question which needs to be asked is whether the rights of humans to enjoy the nature is unlimited, and whether humans have unrestricted and unlimited rights to enjoy the nature the way they like, or does the nature, encompassing the entire environment, and its inhabitants have certain rights of their own which needs to be respected by us humans? Does the rights of

nature conflict with rights of humans? Do the rights of nature demand humans to maintain a balance between their right to enjoy the nature, and their duty towards protecting the nature?

The Indian Constitutional framers were well aware of the fact that the government and the citizens have a paramount and foremost duty to protect, preserve, as well as to improve the environment. Environment includes and encompasses a whole set-up by itself, covering everything natural around. The Merriam Webster Dictionary defines environment as, “the complex of physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival”^{xxxii}.

The concept that the nature too has rights is well balanced to ensure that along with the human rights, the natural rights are well established, that of other species, and what is good for the planet as a whole. It recognises that the humans, the ecosystem, and all species thriving are all intertwined and interconnected. It is often acknowledged that we, humans have the greater responsibility of maintaining this balance, since we are more aware of our actions and are able to reason.

Countries like Bolivia, Ecuador, and New Zealand have already recognised the right of nature completely under its Constitutional framework. Bolivia is one of the first country to push for the universal recognition of the rights of nature in the United Nations General Assembly. In December 2009, People’s Conference on Climate Change and the Rights of Mother Earth was held in Cochabamba, Bolivia. During this conference, the Universal Declaration on the Rights of Mother Earth was enacted. Bolivia has also made its own unique “Mother Earth Law”, giving equal rights to the nature, and transforming the economy and the society.

Ecuador is the first country to give Constitutional rights to nature. Ecuador rewrote its Constitution in 2007 to include in its Constitution the rights to nature. The new Constitution includes a chapter on the rights of nature, titled as “Rights for Nature”^{xxxiii}. “Rights for Nature Articles acknowledge that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles. And we, ‘the people’ have the legal authority to enforce these rights on behalf of ecosystems”^{xxxiv}.

ENVIRONMENT AND ECOSYSTEM *VERSUS* DEVELOPMENT

At the outset, for sake of simplification, in this research paper the term “environment” encompasses the so-called ecosystem. Though loosely defined, ecosystems are more “functional entities” when compared with the amorphous terminology such as “environment”. Nevertheless, the invocation of a terminology like “ecosystem” transports the thought closer to the nature. However, invocation of the term “environment” highlights the man-nature dynamics for all the practical purposes. Clearly, the environment and ecosystem do not have exclusive existence in any philosophical and constitutional debate.

While every developing country, and more specifically India needs to be dynamic at development, it has to be done in a sustainable manner, and without troubling the environment. One has to remember that development at the cost of the environment and the nature has always created more damage than one can imagine, and no good ever comes from disturbing the calm of the waves.

The Paris Agreement in 2016 discussed the strengths and weaknesses of development and its consequent effects on the environment. It was held with the objective of limiting and curtailing the rise in the global warming. Implementation of the Paris Agreement requires economic and social transformation^{xxxv}. The Paris Agreement focused upon long term control of the damage which would ensue if corrective and remedial actions are not taken at the right time.

Does efficiency in developmental projects means that the environmental and ecological concerns need to be efficiently disposed too? Many projects come up under the garb of development and growth but are often seen injuring the environment and those dependent on it. While on one hand we pledge to protect, preserve, and safeguard the environment, on the other hand, we have forgotten the plight of the environment and non-human species that are silently being affected by lack of environmental concerns.

The ongoing conflict between development *verses* environment has led the Supreme Court of India to step in number of times and balance the competing interest of both. The Court in the case of the Vellore Citizens Welfare Forum v UOI^{xxxvi}, applied the polluter pays principle and made the tannery owners liable to pay for the pollution they had caused. The Court also ordered the tanneries not functioning by installing effluent treatment plant to close down.

In the case of *Narmada Bachao Andolan v UOI*^{xxxvii}, the Court took the criticism levelled against it in a positive stride when it failed to acknowledge that the precautionary principle was to be applied in cases of dams being constructed on an ecological fertile land.

The recent incidences of natural disasters all around the world is an indication of our actions to interfere with the natural system not yielding much good reasons. Rising water levels, global warming, cyclones, landslides, etc, are all a consequences of the unmindful and negligent development. The over aspirations of nation to speedy development and economic growth has led to environmental disasters. It was held by the Court in the case of *Subhash Kumar v State of Bihar* that “The right to life enshrined in Art. 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Article 32”^{xxxviii}.

In *Chameli Singh v. State of U.P*, the Court held that “he right to live in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society”^{xxxix}.

The entire right of nature and the right of the environment jurisprudence rests on the idea that human development is possible only when a clean, safe, and healthy environment is maintained. Environment has been defined above as encompassing everything living and non-living. Thus, it becomes imperative for humans to cater to the rights of the environment and the nature along with their own right to development and existence.

THE NOVEL CONCEPTS OF “PRE-HABILITATION” AND “COMPENSATORY PRE-AFFORESTATION”

In 1996, in response to the PIL filed by *Bittu Sahagal vs The Union of India & Others*, the “Dahanu Taluka Environmental Protection Authority” was constituted by the Hon. Supreme Court of India – which was entrusted with the conservation and sustainable development of the eco-fragile region of Dahanu Taluka in Palghar District, State of Maharashtra. This Authority was one of its kind and it in fact constituted an independent governing body for conserving and preserving of the bio-diversity of Dahanu terrestrial and marine ecosystems. It was chaired by Justice Chandrashekhhar Dharmadhikari (the retired judge of Bombay High Court).

The tribal community and two NGOs from Dahanu Taluka approached the DTEPA with a prayer for realigning the Mumbai-Talasari Expressway – which was marked for passing through the Dahanu Taluka (about 27 Km stretch). The EIA was carried out by the Highway Authority (the project proponent) for the Mumbai-Talasari Expressway Project and the EIA Report was submitted to the Ministry of Environment and Forests, Government of India and the Department of Environment, Government of Maharashtra. The basic objection was for the missing environmental and ecological data in the EIA Report and analyses of threats.

Asolekar and Gopichandran (2005) have presented a detailed *Case Study* on this matter and the outcome of the ruling by the DTEPA in Chapter 6, Section 6.5^{xl}. The excerpts from the *Case Study* are quoted verbatim in the following paragraphs:

“The Mumbai-Talasari Expressway Project was proposed as an alternative solution to minimize the ever-increasing traffic load on National Highway (NH-8), connecting Mumbai and Ahemdabad and to cater to the fast moving long distance traffic consisting of trucks, buses, and automobiles. As per the statutory requirements, any project costing more than Rs. 50 Crores must have clearance from the Ministry of Environment and Forests (MoEF), Government of India, New Delhi. In addition to the aforementioned obligation the proposed highway faced significant constraint. A 27 Km stretch out of the total 104 Km of proposed length of highway was to pass through the Dahanu Taluka, already been notified as an eco-fragile area by MoEF. This particular aspect of the project provided significant scope for carrying out EIA.

A group of NGOs, who had filed PILs and subsequently were greeted by the Honorable Supreme Court of India by declaring Dahanu Taluka as Eco-fragile area, continued to participate in the EIA process for the project. In response to their activity a quasi-judicial authority entitled the Dahanu Taluka Environmental Protection Authority (DTEPA) was constituted by the MoEF as desired by the honorable Supreme Court of India.

Given the situation, the MoEF ordered the concerned parties to obtain clearance for the 27 Km stretch passing through the eco-fragile zone first; before the 104 Km Mumbai-Talasari Expressway project could be reviewed for possible clearance by the Ministry. Thus, an EIA study was conducted and the report was presented to MoEF for the entire length of 104 Km and to DTEPA for the stretch of 27 Km alignment passing through the Dahanu Taluka.”

The Concept of Compensatory Afforestation Prior to Tree Cutting:

“An environment management plan (EMP) for a highway or expressway project is often a critical element of the EIA report because such large-scale construction projects are likely to pose significant impact on the contagious environment. It should also be realized that on completion and during the operation stage, the project would have to ensure beneficial impact on the overall environmental quality of the region by minimizing the traffic load (in this case on national highway NH-8) and enable smooth flow of heavy vehicles passing through the proposed corridor. The alignment of the proposed Mumbai-Talasari Expressway was designed with utmost consideration ensuring minimal impact on the habitat and population. The salient features of the EMP are given here under:

- ✓ Compensatory Afforestation in lieu of forest land,
- ✓ Green belt all along expressway on both sides,
- ✓ Noise barrier near places of habitation,
- ✓ Communication and surveillance facility all along expressway,
- ✓ Culverts/under passages for movement of animals and people at average distance of 500m along expressway,
- ✓ Adequate cross drainage structures to avoid flooding of adjoining areas,
- ✓ Storm water drainage arrangement which includes toe drains, boundary gutters, median drain, verge drain, catch pit,
- ✓ Adopting advanced techniques for construction of bridges like cantilever construction with large spans, launching of pre-cast girders to minimize the impacts on water bodies,
- ✓ No new quarries to be opened in Dahanu Taluka,
- ✓ Quarries / borrows areas to be located away from water bodies and habitats; and
- ✓ Special provision made in the BOT contract, so that contractor will take care of the safety, health and hygiene of the work force and that of the work environment.”

The Concept of Pre-Habilitation as opposed to the Conventional Re-Habilitation:

“The other mitigation measure proposed in EMP includes a pre-habilitation of project-affected persons (PAPs). This condition was accepted in the light of discussions with the DTEPA in

presence of NGOs and officials of the development agency. As stated earlier, the alignment was selected to minimize the impact on habitation. Subsequently, the expressway alignment was even modified to avoid some houses in the village Navje. The number of PAPs whose dwellings are affected are 419, in 39 villages. The numbers of tribal whose dwellings are affected are 256. The size of these dwellings varies from 9 to 270 m². A detailed pre-habilitation plan was prepared for all the PAPs. The salient features of the seven-point plan are given below:

- ✓ Pre-habilitation will be done simultaneously with the construction implementation. This means that affected house will be demolished only after new dwellings is constructed for the PAPs,
- ✓ Compensation at market rate for land, wells, trees etc shall be paid 3. Additional ex-gratia payment for land, is under consideration of Government of Maharashtra,
- ✓ Provision of house in lieu of house for tribal in nearby Gaothan will be made,
- ✓ House in lieu of house will be provided for other PAPs', who are non-tribal, on request,
- ✓ Suitable training facility will be provided to PAPs' to be employed as per necessity on the project during construction and operation,
- ✓ Procedure as laid down in Panchayat's (Extension to the scheduled areas) Act, 1996 will be followed for land acquisition for tribal areas; and
- ✓ Considering the present and future projected traffic on this corridor, construction of six lanes Mumbai Talasari expressway is inevitable and well justified.

The entire project of expressway from Mumbai to Talasari with an estimated cost of Rs. 758 crores was submitted to MoEF including the EIA report in September 1998. The 27 Km stretch passing through the Dahanu Taluka was referred by the MoEF to DTEPA in November 1998 for environmental clearance. The DTEPA granted a no-objection certificate in principle in October 1999. The project was also referred to the Wildlife Institution of India (WLI), Dehradun as well as the Chief Conservator of Forests (CCF) and Chief Wildlife Warden (CWW) for their comments. The CCF and CWW gave their clearance in April 1999. The WLI, however, asked for certain clarifications, which are now being provided. The clearance is expected from MoEF in near future, possibly after a final review meeting and presentation.”

SUMMARY AND CONCLUSIONS

It is well understood now that the forests form the natural habitat and source of livelihood for the indigenous, tribal and remote rural communities. There is a great economic value for the flora and fauna and biodiversity provides a great deal of “ecosystem services” – which is a key to our long-term sustainable development. Paying disproportionate attention to economic growth and not adopting the supportive strategies for protection of the rights of the weaker sections of society as well as not taking the responsibility of conservation and protection of the natural environment and ecosystems may cost us dearly in the immediate future.

The salient conclusions can be summarised as follows:

- (1) In his *Theory of Rights*, Professor Harold Laski has rightly pointed out that “one man’s right is also his duty”. However, Laski also points out that the individual must perform his duty which shall be in the best interest of the society. The duty performed should be such that the general welfare of the State is related.
- (2) When one thinks about the duties that the individual owes to another, we cannot miss the argument that no right is ever absolute. The importance of imposing limitations and restrictions is also seen under the Indian Constitution which imposes inherent restrictions upon the enjoyment of fundamental rights. These fundamental rights are not absolute and can be restricted by the law made by the Parliament, *by the procedure established by law*. These inherent restrictions on the rights guaranteed under the Indian Constitution are discussed in this paper.
- (3) The notion of rights in the USA consists of several rights that are protected by the Constitution of the USA and the State Constitutions, various legislations enacted by the USA Congress, State legislatures, and the State referenda. The USA is generally given high to fair ranking in the human rights index by the Freedom House ranking system. It also receives heavy International criticism for its systematic ignorance towards racial discrimination, weak labour class protection, police brutality, police corruption, mistreatment to prisoners, highest number of undertrial and juvenile prisoners, etc.
- (4) The most significant Bill of Rights of the USA, which comprises the first ten amendments to the USA Constitution, consists of a “mutually reinforcing guarantee of individual rights

and the limitations on State and Federal government. This English Bill of Rights created Constitutional supremacy in England, with the Kings and the Queens being the head, but their powers limited by the Constitution. People thus received their individual rights, and the monarchs were subject to the powers of the English Parliament, who supervised the powers of the monarch.

- (5) Having discussed about the concept of human rights, we have to also study whether these human rights, when equated with the rights of the nature encompassing the ecosystem and the surrounding flora and fauna, giving rise to the environment verses development debate, leads to a sustainable solution. The Paris Agreement in 2016 discussed the strengths and weaknesses of development and its consequent effects on the environment. It was held with the objective of limiting and curtailing the rise in the global warming. The Agreement focused on long term goals that were set mutually by the participating nations.
- (6) The evolution of human rights and the everchanging dynamic growth in the concept of rights of the nature shall be sustainably balanced when humans understand the importance of respecting the rights of every other non-human species, which includes the environment and the flora and the fauna. This is much possible when developing countries like India takes inspiration form countries like Bolivia, New Zealand, and Ecuador in including the rights of the environment as a part of the Constitution, instead of merely making the citizens duty bound to protect, preserve, and safeguard the environment. Legal rights guaranteed to the nature and the environment would ensure its enforceability. To say the least, the Indian judiciary has already taken a bold step in granting legal rights to entities like the Ganga river, and the Himalayan glaciers, but have met with heavy criticisms.
- (7) The rights of every individual is paramount, but it certainly does not devalue the rights the nature, environment, the non-human species like birds, animals, fishes, etc, enjoy. When an individual uses his right to development as part of his fundamental and basic human right, he hardly sees the damage and the violation he causes to the silent rights guaranteed and enjoyed by the nature and the environmental ecosystem. A right balance between individual human and fundamental rights, and the rights of nature and the environment must be sought to ensure sustainable growth and a balanced development of individual life, but not at the cost and expense of the environment.

ENDNOTES

- ⁱ Asolekar, S. R. and Gopichandran, R. (2005). “Preventive Environmental Management – An Indian Perspective”, Foundation Books Pvt. Ltd., New Delhi (the Indian associate of Cambridge University Press, UK)
- ⁱⁱ Asolekar, M. S. (2021). “The Critical Evaluation of Role of CAG in India from the Perspective of Upgrading the Environmental Policy and Law”, *Int. J of Law Management & Humanities*, Vol. 4, Issue 2, pages 1565-1597.
- ⁱⁱⁱ Wade and Philips, *Constitutional and Administrative Law*, 1, 9th Edition, Edition Bradley
- ^{iv} *Id*
- ^v *Rameshwar Prasad v UOI*, (2006) 2 SCC 1 (167)
- ^{vi} *VG Ram Chandran*; *Fundamental Rights and Constitutional Remedies*; Vol 1 (1964), p. 1
- ^{vii} *AK Gopalan v State of Madras*, AIR 1950 SC 27
- ^{viii} *West Virginia State Board of Education v Barnet*, 319 US 624; 82 Led 1928
- ^{ix} <https://www.drishtiiias.com>, (last visited, 02.04.2021)
- ^x Lamb, Peter (2018); *Harold Laski’s International Functionalism: A Socialist Challenge to Federalism*; Vol 41; *International History Review*
- ^{xi} <https://www.politicalsciencenotes.com/theory-of-rights/theory-of-rights-laski-barker-and-marxists-theories/781#:~:text=Laski%20says%20that%20whether%20man,place%20any%20demand%20for%20right>, (last visited, 04.04.2021)
- ^{xii} COLUCHE, PENSÉES ET ANECDOTES [THOUGHTS AND ANECDOTES] (1995)
- ^{xiii} App. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, para. 5 (July 23, 1968)
- ^{xiv} E. Bertrand Cattinari, The doctrine of “implied limitations” of fundamental rights: an argument against legal paternalism, University of Leicester School of Law Research Paper No. 15-18
- ^{xv} John Stuart Mill (1859), *On Liberty and Other Essays* (Digreads 2010) 10.
- ^{xvi} Article 48A of the Constitution
- ^{xvii} <https://www.resurgence.org>, (last visited, 04.04.2021)
- ^{xviii} *Animal Welfare Board of India v. Nagaraja and Others*, Supreme Court of India Civil Appeal No. 5387 (May 7, 2014)
- ^{xix} Will Kymlicka & Sue Donaldson, *Animal Rights, Multiculturalism, and the Left*, 45 *J. Soc. Phil.* 116, 127 (2014).
- ^{xx} *Id* at 16
- ^{xxi} https://en.wikipedia.org/wiki/Human_rights_in_the_United_States#, (last visited, 05.04.2021)
- ^{xxii} Brennan, William, J., ed. Schwartz, Bernard, *The Burger Court: counter-revolution or confirmation?* Oxford University Press US, 1998
- ^{xxiii} “United States”; freedomhouse.org. Retrieved February 17, 2018.
- ^{xxiv} <https://www.britannica.com/topic/Bill-of-Rights-United-States-Constitution>; (last visited, 05.04.2021)
- ^{xxv} <https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say>, (last visited, 05.04.2021)
- ^{xxvi} <https://www.history.com/topics/british-history/english-bill-of-rights#>, (last visited, 05.04.2021)
- ^{xxvii} Wadham, John; Mountfield, Helen; Prochaska, Elizabeth; Brown, Christopher (2011). *The Human Rights Act 1998*. Blackstone's Guides. Oxford: Oxford University Press.
- ^{xxviii} https://en.wikipedia.org/wiki/United_Kingdom_constitutional_law#Liberty_and_a_fair_trial, (last visited, 05.04.2021)
- ^{xxix} *Semayne’s case* (1604) 77 Eng Rep 194, Sir Edward Coke, ‘The house of everyone is to him as his castle and fortress, as well for his defence against injury and violence as for his repose.
- ^{xxx} *R v Home Secretary, ex p Simms* [2000] 2 AC 115, 126
- ^{xxxi} <http://www.ohrc.on.ca/en/policy-competing-human-rights/4-what-are-competing-rights#>, (last visited, 06.04.2021)
- ^{xxxii} <https://www.merriam-webster.com/dictionary/environment>, (last visited, 06.04.2021)
- ^{xxxiii} <https://www.therightsofnature.org/ecuador-rights/>, (last visited, 06.04.2021)
- ^{xxxiv} *Id*
- ^{xxxv} <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>, (last visited, 06.04.2021)
- ^{xxxvi} *Vellore Citizens Welfare Forum v UOI*; (1996) 5 SCC 647
- ^{xxxvii} *Narmada Bachao Andolan v UOI*; AIR 1999 SC 3345
- ^{xxxviii} *Subhash Kumar v State of Bihar*; A.I.R. 1991 S.C. 420
- ^{xxxix} *Chameli Singh v State of UP*; (1996) 2 S.C.C. 549.

^{x1} Asolekar, S.R. and Gopichandran, R. (2005). “Preventive Environmental Management – An Indian Perspective”, Foundation Books Pvt. Ltd., New Delhi (the Indian associate of Cambridge University Press, UK)

