



CONSTITUTIONAL AND JUDICIAL PERSPECTIVE OF NOISE POLLUTION IN INDIA

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ABSTRACT

The intensity and the frequency of noise has increased in the modern age due to urbanization, industrialization and technological advancements which causes noise pollution. Noise pollution contaminates the environment and affects the health of persons, their activities and mental abilities. The problem of noise pollution has already crossed the danger point in threatening proportion and has become a serious challenge to the quality of life of people globally. With the advancement of science and technology new devices like microphones, loudspeakers have been invented which have made the right to freedom of speech and expression more meaningful as with their help an individual could express himself more vividly and reach more audience but at the same time if this results into noise pollution it violates various rights of public such as right to leisure, right to silence, right to sleep, right to privacy, etc.

The constitution of India creates an obligation on the part of "state" as well as "citizens" to protect and improve the environment. The environmental rights are considered as third generation rights and pollution free environment has been held as involving greatest social justice. The Supreme Court and High Courts in India have held through creative interpretation of the article 21 that to live in healthy and pollution free environment is part of right to life enshrined in article 21 of the constitution. Noise pollution has its interface with articles 19(1)(a), 19(1)(g), 21, 25 of the constitution of India. In this background this paper is an

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attempt to analytically analyse the constitutional and judicial perspective of noise pollution in India.

Keywords: Noise, Pollution, Environment, Development, Health, Constitution.

INTRODUCTION

Noise is a kind of environment pollution in the form of waves.² It is called a “shadowy public enemy”.³ Noise pollution has been identified as a “slow killer”.⁴ Noise causes pollution when it contaminates the environment in such proportion that it becomes a nuisance and cast ill effects on the health and well-being of persons. Noise pollution may be held as “unwanted sound released into the atmosphere without having regard to its adverse effects”.⁵ The intensity and the frequency of noise has grown now a days due to urbanization, industrialization and scientific and technological advancements. It is an offshoot of industrial culture and civilization which is transgressing environment in invisible way and in severe proportion. The intensity of noise pollution has reached the danger level and it is posing a serious challenge against right to have pollution free environment.

With the advancement of science and technology new devices like microphones, loudspeakers have been invented which have made the “right to freedom of speech and expression” more meaningful as with their help an individual could express himself more vividly and reach more audience but at the same time if this results in noise pollution it violates various rights of public such as right to leisure, right to silence, right to sleep, right to privacy, etc. In this backdrop the author has made an effort in this paper to analytically analyse the constitutional and judicial perspective of noise pollution in India.

² Ranjit Singh, “Legal Control of Noise Pollution in India: A Critical Evaluation”, 3 *International Journal of Research in Humanities and Social Studies* 34 (2016), available at: <https://www.ijrhss.org/pdf/v3-i4/5.pdf> (last visited on Jan. 2, 2022).

³ *Ibid.*

⁴ Shatish Shastri and Manju Trivedi, *Noise Pollution- Its Scientific and Legal Perspectives*, (Divya Publication, Jodhpur, 1988).

⁵ M. C. Mehta, II *Lal's Commentary on Water & Air Pollution and Environment Protection Laws*, 1326 (Delhi Law House, Delhi, 2014).

NOISE POLLUTION: MEANING AND CONCEPT

Noise cannot be defined in a wholly satisfactory manner. The word noise is derived from the Latin word “nausea” which imply “unwanted sound” or “sound that is loud, unpleasant or unexpected”.⁶ It may be defined in law in simple words as “excessive, offensive, persistent or startling sound”. It has also been defined as “unwanted sound, a potential hazard to health and communication dumped into the environment without regard to the adverse effect it may have on unwilling ears.”⁷ Further, noise can be defined as “any unwanted, harsh and loud sound which is annoying, uncomfortable, interferes with speech, damages the hearing capacity, reduces concentration and work efficiency”. Therefore, when the sound is unwanted/undesirable by the recipient or loud enough to be the cause of annoyance, it may be described as noise. However, the *Encyclopedia Britannica* defines noise as “any undesired sound, either one that is intrinsically objectionable or one that interferes with other sounds that are being listened to.”⁸ The *Encyclopedia Americana*⁹ defines noise as “unwanted sound”. Therefore, a sound may be noise if circumstances cause it to be disturbing and depends on a person’s psychology to a great extent. Noise is one of the by-products of the mechanized modern developments. It is mainly caused by machinery of one kind or the other, particularly transportation vehicles, industrial processes and construction works.

It has been stated that “a legally significant objective definition of noise is complex and difficult to discern, for noise is not purely a matter of acoustics but of psychology. Subjective factors such as mental attitude, environment, time and place etc., are important in the determination of actionable noise which differ and are hard to quantify. The law cannot take into account every unwanted noise. On the other hand, any sound which becomes excessive, unnecessary or unreasonable has to be put under regulation in order to shield public against unbearable and harmful noise or for its cessation. Scientific methods to that extent may be useful in determining situations where noise steps out from its background and becomes actionable.”¹⁰

⁶ Lavanya, C., Rajesh Dhankar and Sunil Chhikara, “Noise Pollution: An Overview”, 6 *International Journal of Current Research* 6536 (2014) available at: <https://www.journalcra.com/sites/default/files/issue-pdf/5464.pdf> (last visited on Jan 13, 2022).

⁷ B. R. Jindal, K. L. Toky and P.S. Jaswal, *Environmental Studies*, 160 (1998). See also, In *Re Noise Pollution* (V), (2005) 5 SCC 733 at 746.

⁸ See, <https://www.britannica.com/science/noise-acoustics> (last visited on Dec. 15, 2021).

⁹ Francis Lieber (ed.), 21 *Encyclopedia Americana*, 400 (1969).

¹⁰ *Supra* note 4 at 1325.

ENVIRONMENTAL LEGISLATION AND CONTROL OF NOISE POLLUTION

The term “noise pollution” is not defined in any Central legislation. The Air (Prevention and Control of Pollution) Act, 1981 was amended in 1987 which widened the definition of “air pollution”.¹¹ “Noise” is now included as an “environmental pollutant” in section 2(a) of the Air (Prevention and Control of Pollution) Act, 1981 and hence, held as a type of “air pollution”.¹² It may be noted that the Air Act is not the proper legislation to “prevent and control noise pollution”. The Act has some lacunae and the “standards for control of noise pollution there under remain unimplemented in the paucity of effective control mechanism”.¹³

Indeed, noise is a form of sound which is not a substance but is a proliferation of compression waves, excess presence of which is called noise pollution. Noise, thus, does not fall within the ambit of “environmental pollutant” which is defined in section 2(b) of the Environment (Protection) Act, 1986 as “any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment” nevertheless it has been held as environmental pollutant as the term noise has found place in Section 6(2)(b)¹⁴ wherein it is stated that the Central Government may make “rules to regulate environmental pollution”¹⁵. It states that “such rules may provide for the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas”. However, in the definition of “environmental pollutant” noise is not expressly included.¹⁶

The Central Government by exercising the rule making power under the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986 has made the Noise Pollution (Regulation & Control) Rules, 2000. The rules purport to “regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standard in respect of noise”. This was for the first time that specific law was made for controlling noise pollution in India. The 2000 Rule “permits the use of loudspeaker only with the consent of the authority, and proscribes the use of loudspeaker or public address

¹¹ The Air (Prevention and Control of Pollution) Act, 1981, Section 2(a).

¹² *Supra* note 4 at 1326.

¹³ *Id.* at 1330.

¹⁴ The Environment (Protection) Act, 1986, Section 6(2)(b).

¹⁵ *Id.*, Section 2(c). It defines ‘environmental pollution’ to mean “the presence in the environment of any environmental pollutant.”

¹⁶ P.G. Kurup, “Environment: A Scientist’s View” in P. Leela Krishnan, *Law and Environment*, 254 (Eastern Book Company, Lucknow, 1992).

system at night between 10.00 p.m. to 6.00 a.m., except in closed premises for communication.”¹⁷

CONSTITUTIONAL PERSPECTIVE ON CONTROL OF NOISE POLLUTION

The constitution of India creates an obligation on the part of ‘state’ as well as ‘citizens’ to “protect and improve the environment”.¹⁸ The Supreme Court and High Courts in India have held through creative interpretation of the article 21 that “to live in healthy and pollution free environment is part of right to life enshrined in article 21 of the constitution”.

In *T. Damodhar Rao v. Municipal Corporation, Hyderabad*,¹⁹ the Supreme Court observed that “It would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by article 21 of the constitution embrace the protection and preservation of nature’s gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative article 21 of the constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of article 21 of the constitution.” Also, in *Subhash Kumar v. State of Bihar*,²⁰ the Supreme Court observed that “Right to live is a fundamental right under article 21 of the constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to article 32 of the constitution for removing the pollution of water or air, which may be detrimental to the quality of life.”

The problem of noise pollution is linked to some fundamental rights conferred through article 19(1) of the constitution which provides that “all citizens shall have the rights- (a) to freedom of speech and expression; (b) to assemble peacefully and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India...”. However, these rights are

¹⁷ K. Rajasekharan, “Landmark Cases on Noise Pollution and How to Deal with it!”, available at: <https://www.lawyersclubindia.com/articles/landmark-cases-on-noise-pollution-and-how-to-deal-with-it--11143.asp#:~:text=Person%20accused%20in%20noise%20pollution%20was%20fined%20under%20IPC&text=The%20order%20of%20the%20trial.and%20dismissed%20the%20revision%20petition>. (last visited on Dec., 18, 2021).

¹⁸ See, The Constitution of India, Article 48-A and Article 51-A(g).

¹⁹ AIR 1987 AP. 171.

²⁰ (1991) 1 SCC 598.

not absolute and subject to reasonable restrictions imposed or imposable by law “in the interest of- the sovereignty and integrity of India; the security of the state; friendly relations with foreign states; public order, decency or morality or in relation to contempt of court, defamation or incitement to offence; general public.” Article 19(1)(g) provides the freedom to all citizens “to practice any profession or to carry on any occupation, trade or business”. However, this right is also not absolute and is subject to reasonable restrictions. Therefore, no person can claim that he has fundamental right to carry on any profession, occupation, trade or business irrespective of the fact that it causes nuisance including nuisance caused by noise to other persons.

In view of the fundamental rights conferred by the article 19(1), the use of loudspeaker assumes the status of a fundamental right which may be a causal factor of noise pollution. The right to use a loudspeaker has not been specifically mentioned in article 19(1)(a) of the constitution but the same is covered in the said clause because it is an integral part of the basic nature and character of the right mentioned therein. The state can enact law to put reasonable restriction on the use of loudspeakers and mechanical or other devices which are used to amplify sound, but a condition that the mike, loudspeaker etc. cannot be used at any time amounts to an unreasonable restriction on the right under article 19(1)(a).

Further, article 25 is about “Freedom of conscience and free profession, practice and propagation of religion” and provides that “all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion”. However, this right is also “subject to reasonable restrictions on the ground of ‘public order’, ‘morality’ and ‘health’ and other provisions of the Part III of the constitution”.²¹ This right as it is inclusive of ‘right to propagate’, may be understood to include the right to use loudspeakers and amplifiers, day and night when non-stop recitations are made as in case of akhand path of Ramayana or the Guru Granth Sahib, or at frequent intervals of the day, as in case of the Azan by Mulla of a Mosque.

This right has been made “subject to health”, therefore the “noise caused by loudspeakers can be prohibited in view of public health” but in such circumstances the “nexus between noise and public health is required to be judicially established”. The propagation part of religion is also

²¹ The Constitution of India, Article 25.

a part of the right to freedom of speech and expression falling within the ambit of article 19(1)(a) which is subject to reasonable restrictions on the ground of decency. The right under article 25 is subject to the other provisions of Part III of the constitution, and thus the propagation of religion, by recitations of a scripture or the cries of a Mulla, through loudspeaker may be banned on the ground of decency.²²

JUDICIAL PERSPECTIVE ON NOISE POLLUTION

There are certain necessities of life which are very much essential to remain healthy and may be termed as biological necessities such as silence, sleep, rest etc. They are held as human rights. Noise is held as a health hazard which is required to be addressed properly in order to maintain public health and therefore courts at times have not hesitated to interfere in matters concerning noise pollution. If there is noncompliance of constitutional mandates by the administrative agencies so far as they relate to enforcement, the courts cannot turn blind eyes if actions are brought before them. It has been held that “the fundamental duties are intended to promote people’s participation in restructuring and building a welfare society and the directive principles are intended to build the edifice of a welfare state.”²³

To protect the environment and to preserve it is a constitutional directive to both the state and citizens as well. Neglect of this constitutional mandate is express invitation to disaster. Environmental concerns are therefore a matter of priority and actions brought by citizens “cannot be dismissed on the technical ground of *locus standi*”.²⁴ It has further been held that “where on account of human agencies, the quality of air and the quality of environment are threatened or affected, the court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest.”²⁵

In *Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal*,²⁶ the Apex Court held that “a citizen of this country must be allowed to live in a society which is peaceful, free from mechanical and artificial sounds which creates a tremendous health hazards and adverse

²² R. G. Chaturvedi and M. M. Chaturvedi, *Law on Protection of Environment and Prevention of Pollution*, 53 (The Law Book Company (P) Ltd., Delhi, 1993).

²³ *V. Laxmipathy v. State*, AIR 1992 Kant. 57.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal*, AIR 1999 Cal. 15 at 24.

effects on the citizens. Citizens have a right to live in a society which is free from pollution. If pollutants are encouraged, in that event it would be the beginning of the end of the civilization.” The Court further held that “if a citizen has a right, it is also equally a duty on the part of the court to see that such rights are preserved and not allowed to be destroyed. Legislature may not rise to the occasion but that does not mean that court will keep its hands folded in the absence of any legislative mandate. The courts are the custodian of the rights of the citizen and if the court is of the view that citizens’ rights guaranteed under the Constitution of India are violated, the court is not powerless to end the wrong. Principle of judicial activism confers power upon the court to be active and not to remain inactive for the purpose of protecting rights, duties and obligations of the people.”²⁷

In *A.P. Pollution Control Board (II) v. Prof. M. V. Nayudu*,²⁸ the Supreme Court observed that “In today's emerging jurisprudence, environment rights which encompass a group of collective rights are described as ‘third generation rights’. The first-generation rights are generally political rights such as those found in the International Convention on Civil and Political Rights while ‘second generation rights’ are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights.” Thus, right to a noise-free environment is a third-generation right.

ARTICLES 19(1)(A) AND 21 OF THE CONSTITUTION AND NOISE POLLUTION

Article 19(1)(a) provides to all citizens a fundamental “freedom of speech and expression” whereas article 21 gives citizens a ‘right to live in a healthy environment’. The freedom provided under article 19(1)(a) “is not absolute and is subject to reasonable restrictions under article 19(2) of the constitution”.

In *Rajni Kant v. State of U.P.*,²⁹ the bylaws of Municipal Board, Allahabad required that permission from executive officer of the Board is necessary for using loud speaker. It was challenged by the petitioner as “violative of freedom of speech and expression which includes

²⁷ *Ibid.*

²⁸ (2001) 2 SCC 62. See also, *Shobana Ramasubramanyam v. Chennai Metropolitan Development Authority*, AIR 2002 Mad. 125.

²⁹ A.I.R. 1958 All. 360.

the right to use loudspeaker as well”. The court held that “the use of mechanical appliances is not covered by the guarantee of freedom of speech and expression under article 19(1)(a)”. However, no reasons were given by the court for holding so.

But in *Indulal v. State*,³⁰ the Court held that “the right to use loudspeaker is included in the freedom of speech and expression.” The court compared “the freedom of press” with that of “freedom of speech and expression” and held that “the freedom of speech and expression includes the freedom to use loudspeakers”. The court held that “this fundamental right is not merely a right to make use of one's larynx... Thus, the essence of the right does not consist in merely making use of the human noise, but it lies in the ability to convey one's views to others.... It follows from this that the right includes not merely the right to propagate one's views but also comprehends the right to circulate those views to as large an audience as one can possibly reach. If the mechanical appliances and instruments other than the press can help the citizen in reaching a wider circle of audience, than the limits of his voice can permit, there does not appear to be any good reason why the citizen should not be permitted to avail himself of them”.³¹

In *State of Rajasthan v. G. Chawla*,³² the Ajmer (Sound Amplifier Controls) Act, 1952 was challenged as violative of “freedom of speech and expression”. It was argued that “the state cannot enact such laws as it violates the fundamental freedom of the citizens under article 19(1)(a)”. The question before the Supreme Court was “whether the state legislature has the right to prevent and control loud noise and make it punishable” and “whether such restrictions or state enactments amount to violation of the freedom of speech and expression”.

The Supreme Court held that “the freedom under article 19(1)(a) is not absolute and it is subject to reasonable restrictions imposed in the interest of public order and the state is empowered to enact such laws in the exercise of its power under Entry 8, dealing with Public Health and Sanitization of List II, of the Seventh Schedule. The States have the right to control loud noise when the right of such user in disregard to the comfort and obligations to others, emerges as manifest nuisance to them. No citizen can exercise his fundamental freedom under the Constitution in such a way that it creates nuisance or becomes a health hazard. Now such an

³⁰ AIR 1963 Guj. 259.

³¹ *Id.*at 263.

³² AIR 1959 SC 544.

activity is also considered as violative of constitutional duty imposed on every citizen under article 51-A of the constitution of India.”

In *P.A. Jacob v. Superintendent of Police, Kottayam*,³³ the Kerala High Court held that “the fundamental right to freedom of speech and expression guaranteed under article 19(1)(a) of the constitution does not include the right to use loudspeakers or sound amplifiers.” It was rightly observed that “the right to speech implies, the right to silence. It implies freedom, not to listen and not to be forced to listen. The right comprehends the freedom to be free from what one desires to be free from.” The court further observed that “apart from the right to be let alone, freedom from aural aggression, article 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone is positively the right to be free from noise. Exposure to high noise, is a non-risk and it is proved to cause bio-chemical changes in a man which may be dangerous and sometime disastrous to a person and thus, it would amount to a clear infringement of the constitutional guarantee of right to life under article 21 of the constitution. In other words, right to life comprehends right to a safe environment, including safe air quality, safe from noise.”

In *Burrabazar Fire Works Dealers Association v. Commissioner of Police, Calcutta*,³⁴ the Calcutta High Court held that “under article 19(1)(a) read with article 21 of the constitution of India citizens have a right to a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary ingredients of the right to life guaranteed under article 21 of the constitution. There are various other sources where the noise is created or generated but which offend citizens right guaranteed under article 19(1)(a) and 21 of the constitution.”

In *Free Legal Aid Cell v. Government of NCT of Delhi*,³⁵ a PIL was filed contending that “as a result of display of fireworks and use thereof during festivals and marriages, physical and mental health hazard is suffered by adults as well as children.” It was also contended that “because of indiscriminate use of loudspeakers, noise pollution has become a routine affair affecting mental as well as physical health of citizens.” The Delhi High Court rightly observed that “the effect of noise on health is a matter which has yet not received full attention of our

³³ AIR 1993 Ker. 1.

³⁴ AIR 1998 Cal. 121.

³⁵ AIR 2001 Del. 455.

judiciary which it deserves. Pollution being wrongful contamination of the environment which causes material injury to the rights of an individual, noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person, and would therefore offend article 21, if it exceeds a reasonable limit.” In *Ramlila Maidan Incident, re*,³⁶ it was held that “the citizens/ persons have a right to leisure; to sleep; not to hear; and to remain silent. The knock at the door, weather by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen.”

ARTICLES 19(1)(G) AND 21 OF THE CONSTITUTION AND NOISE POLLUTION

The constitution of India guarantees its citizen a fundamental freedom “to practice any profession or to carry on any occupation trade or business” under article 19(1)(g). But this fundamental freedom is also not absolute and it is subject to reasonable restrictions in the interest of “general public” which can be imposed under article 19(6). Thus, “citizens cannot exercise this fundamental freedom under article 19(1)(g) in such a manner so as to violate the fundamental right of other persons under article 21 of the constitution”.

In *Ramlal v. Mustafabad Oil and Cotton Ginning Factory*,³⁷ the Punjab and Haryana High Court rightly observed that “Once a noise is considered to be a nuisance of the requisite degree it is no defence to contend that it was in consequence of a lawful business or arose from lawful amusements or from places of religious worship.”

In *Burra Bazar Fireworks Dealers Association v. Commissioner of Police, Calcutta*,³⁸ a question of seminal importance before the court was whether citizens have an inherent right to manufacture fireworks which creates sound beyond permissible limits and whether restrictions can be imposed on the manufacturing of such fireworks by the authorities. The Calcutta High Court held that “Safety, health and peace is guaranteed to citizens of India and no one can carry on any trade or business which may seriously affect safety, health and peace of the community. Accordingly, it must be held that article 19(1)(g) of the constitution of India does not guarantee

³⁶ (2012) 5 SCC 1.

³⁷ AIR 1968 P & H 399.

³⁸ AIR 1998 Cal 121.

the fundamental right to carry on trade or business which creates pollution or which takes away that communities' safety, health and peace. It cannot be said that a citizen has fundamental right under article 19(1)(g) of the constitution of India to carry on trade or business and/or manufacture poison which may be used for killing of people." Accordingly, the court held that "there is no inherent or fundamental right in a citizen to manufacture, sale and deal with fireworks which will create sound beyond permissible limits and which will generate pollution which would endanger the health and the public order. A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by bursting out from noisy fireworks."

In *Farhd K. Wadia v. Union of India*,³⁹ the question involved was "whether musical functions, being Rang Bhawan, in an open theatre should be allowed to be carried on or not despite the fact that it is situated within 100 metres of an educational institution and hospital." The brief facts were that "Rang Bhavan is an institution owned and run by the State of Maharashtra. It is the only open theatre in the city of Mumbai. It is let out on hire for the purpose of holding music and cultural programmes". The Bombay High Court had ban on use of loudspeakers under the Noise Pollution (Control and Regulation) Rules 2000. The State of Maharashtra following the order denied the permission to book Rang Bhawan stating that the use of loudspeakers during cultural programs at Rang Bhawan will not be permitted. Thereby the Bombay High Court was approached for seeking permission to book Rang Bhawan. The petition was dismissed. The Supreme Court did not interfere in this matter and observed that "Interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being 'necessity of silence', 'necessity of sleep', 'process during sleep' and 'rest', which are biological necessities and essential for health. Silence is considered to be golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost."

In *Anirudh Kumar v. MCD*,⁴⁰ a writ petition was filed by way of public interest litigation alleging that hardship and nuisance is caused by the commercial activities of the pathological laboratory under the guise of a nursing home. It was contended that "when the Diagnostic Centre was started, it employed about 50 people and installed 25 Air Conditioners, two diesel generator sets of 25 KVA and 40 KVA each in the set-back area of the building along with

³⁹ (2009) 2 SCC 442.

⁴⁰ (2015) 7 SCC 779.

kerosene oil tanks, gas cylinders and electric panels.” With more than 100 cars parked in the vicinity and a count of 300 patients visiting regularly, it created a parking problem for the residents of the area. The Supreme Court observed that “the running of this large pathological lab has led to emission of hazardous substances and in that process human beings, plants, microorganisms and other living creatures are being exposed to harmful physiochemical properties. Not only this, they also create pollution which contaminates water on account of the discharge of chemical properties used in the process of running the pathological lab, causing nuisance and harm to public health and safety of the residents of the area.” Therefore, the court ordered the pathological laboratory to be immediately shut down and shift to an alternative place within 4 weeks.

In *M. Mahshook Rahman v. City Police Commissioner*,⁴¹ the Kerala High Court held that “... the right to live in an atmosphere free from pollution is a fundamental right protected by article 21 of the Constitution of India, and noise pollution beyond permissible limits is an inroad into that right. The fundamental right guaranteed under article 19(1)(g) to carry on any occupation, trade or business is not absolute. Any attempt to create noise by amplifying the sound with the help of hi fi amplifier systems and loudspeakers or even the playing of high sound instruments like drums, tom toms, trumpets, bugles and the like which create noise beyond tolerable limits, thereby compulsorily exposing other unwilling persons to hear noise raised to unpleasant or obnoxious levels, will amount to violation of their right to peaceful, comfortable and pollution free life guaranteed by article 21 of the Constitution of India....”.

ARTICLES 19(1)(A), 21 AND 25 OF THE CONSTITUTION AND NOISE POLLUTION

There is a close relationship between the freedom of speech and expression under article 19(1)(a) and that of right to religion under article 25 of the constitution. For example, “if one wishes to propagate his religious ideas as guaranteed under article 25, it is possible through the exercise of his fundamental freedom of speech and expression guaranteed under article 19(1)(a) of the constitution.” The problem becomes more complex when people under the garb of exercise of their right to religion make use of loudspeakers resulting in noise pollution, which becomes a health hazard to the people and violates their fundamental rights under article 21 of

⁴¹ (2020) SCC Online Ker 4250.

the constitution. The judiciary has examined the right to use loudspeakers in exercise of freedom of religion in the light of right to live in pollution free environment.

In *State of Bombay v. Narasu Appa Mali*,⁴² the Bombay High Court made distinction between religious faith and religious practice and observed that “A sharp distinction must be drawn between religious faith and belief and religious practices. What the state protects is religious faith and belief. If religious practice run counter to public order, morality or health or a policy of social welfare upon which the state has embarked, then the religious practice must give way before the good of the people of the state as a whole.”

The Supreme Court in the case of *Acharya Maharajshri Narendra Prasad ji Anandprasadji Maharaj v. State of Gujarat*,⁴³ observed that “No right in an organised society can be absolute. Enjoyment of ones right must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the state has to step in to set right the imbalance between competing interests.” The court further observed that “A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valued exercise of power by the state in the light of the directive principles in the interests of social welfare as a whole.”

In *Bedi Gurcharan Singh v. State of Haryana*,⁴⁴ the appellants were refused permission to use the loudspeakers under the Punjab Instrument (Control of Noise) Act, 1956. This was challenged on the ground of violation of articles 19 and 25 of the constitution. The Supreme Court while explaining the true scope of freedom of speech and expression and that of religion observed that “The fundamental rights guaranteed under articles 19(1)(a), 19(1)(b) and 25 of the constitution are not unfettered and absolute. The right to propagate religion freely, is subject to the condition that it does not violate similar fundamental rights of the followers of other religions. It cannot be said that any person has the right to address a congregation of another religion in order to propagate his own, if it is likely to be resented by the congregation and which may lead to the breach of peace.”

⁴² AIR 1952 Bom. 82.

⁴³ (1975) 1 SCC 11.

⁴⁴ 1975 Cr.L.J. 917 (SC).

Similarly, the Calcutta High Court in *Masud Alam v. Commissioner of Police*,⁴⁵ upheld the “ban on the use of loudspeakers for calling Azan five times a day”. It was held that in such cases, “causing disturbance in the area could not be justified on the ground that it was in connection with religious purposes”. Again in *Om Birangana Religious Society v. State*,⁴⁶ the Calcutta High Court held that “every citizen has a right to leisure, right to sleep and a right not to hear. Noise generated from loudspeakers and microphones posed a serious threat to public health. It cannot be stated that a citizen should be coerced to hear anything which he doesn't like or which he does not require.” The court also asked “the police to be vigilant in the discharge of its duties and directed All India Radio and Doordarshan to disseminate information and create awareness on the harmful effects of noise pollution.”

In *Chairman, Guruvayur Dewasvon Managing Committee v. Superintendent of Police, Thrissur*,⁴⁷ the question before the court was related to the use of “horn type loudspeakers” by the petitioner in and around the temple premises. The petitioner prayed that the respondent authorities be restrained from removing the horn type loudspeakers from the premises of the petitioner. The court obtained the expert opinion from the state pollution control board, which showed that there was no noise pollution by the use of such type of loudspeakers. Thus, the court permitted the petitioner “to use horn type loudspeakers which were used only for a limited duration every day for broadcasting devotional songs and audibility of which was limited within the temple area only.”

In *Maulana Mufti Syed Muhammad Nurul Rahman Barkati v. State of West Bengal*,⁴⁸ the Kerala High Court upheld “restriction on the use of microphone and loudspeaker at the time of giving Azan” and held that “this restriction doesn't violate the freedom of religion under article 25 of the constitution”. The court held that “citizens have right to be protected against excessive sound under article 19(1)(a) of the constitution.” The court further held that “simply because no such formal restriction has been imposed in the other parts of India and the fundamental rights under article 19(1)(a) is enforced strictly in the State of West Bengal and it is not enforced in other parts of India that doesn't amount to any case of any discrimination.”

⁴⁵ 59 CWN 293 (1954-55).

⁴⁶ (1996) 100 CWN 617.

⁴⁷ AIR 1998 Ker. 122.

⁴⁸ AIR 1999 Ker. 15.

In *Church of GOD Full Gospel in India v. K.K.R. Majestic Colony Welfare Association*,⁴⁹ the questions in an appeal before the Supreme Court were that “whether in a country having multiple religious and numerous communities or sects, a particular community or sect of that community can claim the right to add to noise pollution on the ground of religion” and “whether beating of drums or reciting of prayers by use of microphones and loudspeakers so as to disturb the peace or tranquillity of the neighbourhood should be permitted”. In this case the appellant was “using loudspeakers, drums and other sound producing instruments while reciting prayers, which caused noise pollution thereby disturbing and causing nuisance to the normal life of the residents of the K.K.R. Majestic Colony”. The appellant contended that “the right to profess and practice Christianity is protected under articles 25 and 26 of the constitution”, which cannot be taken away by the courts. The Supreme Court observed that “Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that this should be through voice amplifier or beating of drums. In our view, in a civilized society, in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day time or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his study without there being any unnecessary disturbance by the neighbours. Similarly, the old and the infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to six years of age are considered to be very sensible (sic sensitive) to noise. Their rights are also required to be honoured.”

The Supreme Court referred to article 19(1)(a) and the Noise Pollution (Regulation and Control) Rules, 2000 and dismissed the appeal and observed that “the right to religion under articles 25 and 26 of the constitution is subject to public order, morality and health and no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities”. In this case the court also observed that “even though the Noise Pollution (Regulation and Control) Rules,

⁴⁹ (2000) 7 SCC 282.

2000 are unambiguous there is lack of awareness among the citizens as well as the implementation authorities about the rules or their duty to implement the same.”

In *Sayeed Maqsood Ali v. State of M.P.*,⁵⁰ the Madhya Pradesh High Court followed the decision given in *Church of GOD Full Gospel in India* case. In this case, petitioner was a cardiac patient whose house was situated near a Dharmshala. It was alleged by the petitioner that “various religious functions were held in the Dharamshala throughout the year. The Dharamshala was also given on rent for the purposes of holding marriages and other functions in which the loudspeakers were utilised and music was played at a very high pitch creating disturbance to the petitioner and other persons residing in the said locality.” He pleaded that respondent’s act caused noise pollution due to which the petitioner suffered in health. The High Court in view of the totality of the circumstances and after referring to the Noise Pollution (Regulation and Control) Rules, 2000 directed the respondents “not to let out the premises to such persons or associations or organisations which have not obtained the permission of the competent authority with regard to the use of loudspeakers/ public address systems.” The court further directed that “the concerned authority should see it that no function is carried out in violation of the Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000 and if anybody is found to be violating them, then proper steps should be taken to book him as per the law. The District Magistrate is regarded as an authority under rule 2(c) of the Noise Pollution (Regulation and Control) Rules, 2000, it is the duty of the District Magistrate to see that rules are followed in real spirit so that citizenry spirit does not face any disquieting situation”.

The Supreme Court in Noise Pollution (V), *In Re*,⁵¹ has made it clear that “by restricting the time of busting the crackers there is no violation of religious rights of any person as enshrined under article 25 of the constitution”. In this case, the Supreme Court *inter alia*, issued the following directions- “(1) the department of explosives may divide the firecrackers into two categories (i) sound emitting fire crackers and (ii) colour/ light emitting firecrackers; (2) there shall be a complete ban on bursting sound emitting fire crackers between 10:00 p.m. and 6:00 a.m.; (3) the noise level at the boundary of the public place, where loudspeaker or public address system, or any other noise source is being used shall not exceed 10 dB(A) above the

⁵⁰ AIR 2001 M.P. 220.

⁵¹ (2005) 5 SCC 733.

ambient noise standards for the area or 75 dB(A) whichever is lower; (4) no one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10 p.m. to 6 a.m.) except in public emergency; (5) the peripheral noise level of privately-owned sound system shall not exceed by more than 5 dB(A) than the ambient air quality standards specified for the area in which it is used, at the boundary of the private place; (6) no horn should be allowed to be used at night (between 10 p.m. to 6 a.m.) in residential area except in exceptional circumstances; (7) there is need of creating general awareness towards the hazardous effects of noise pollution.” For this purpose, “the need to add a suitable chapter in the textbooks of children to sensitize them, role of the resident welfare association and service clubs, and special public awareness campaign in anticipation of festivals, events and ceremonial occasion” has been emphasized.

In *Aash Mohammad v. State of Haryana*,⁵² the petition was filed in Punjab and Haryana High Court against Singer, Sonu Nigam, based on his statement on twitter on April 17, 2017 as “I’m not a Muslim, and I have to be woken up by the Azaan in the morning. When will this forced religiousness end in India.” The petitioner contended that this amounts to insult of religion and religious belief. The court observed that “If the contents of the complaint are seen in the context of Section 295-A of the Indian Penal Code (hurting religious sentiments), the words used in the tweet are not meant to insult any religion or religious belief of any class of citizens, and are apparently not deliberate or malicious.” Justice Bedi held that “the petition was just a cheap way of gaining publicity by making a well-known singer a scapegoat in the name of religion. Such practices deserve to be deprecated.” The court further held that “azaan is indeed an essential part of the Muslim religion, but the use of microphones is certainly not an integral part of azaan, and a combined reading of the tweets by the singer are meant to criticise the use of electricity / microphones for religious purposes”.

In *Forum for the Prevention of Environment and Sound Pollution v. Union of India*,⁵³ the Supreme Court held that “under the Noise Pollution (Regulation and Control) Rules 2000, prohibition on use of loud speaker during 10.00 p.m. to midnight is not invalid or unconstitutional”. Justice R.C. Lahoti observed that “we have no concern with any religious practice. We have only concern with fundamental rights of the citizens and protect their right

⁵² AIR 2017 P&H 106.

⁵³ A.I.R. 2006 SC 348.

from noise pollution.” The court held that “there were no loud speakers in the old days. So the use of loud speakers cannot be must for performing religious act.” The Hon’ble Supreme Court observed that “any exemption granted by State beyond the parameters of the Environment (Protection) Act 1986, the Noise Pollution (Regulation and Control) Rules 2000 should be considered as violation of articles 14 and 21 of the Constitution.”

In a recent Judgement of Allahabad High Court in *Sushil Chandra Srivastava v. State of UP*,⁵⁴ the High Court issued following guidelines to the state government: “i) The District Magistrate shall give adequate publicity in leading newspapers regarding this direction and Rules, 2000. He shall notify the name of the authority under the Rules, 2000 and his contact number. Detailed notice shall be put up in the offices of Divisional Commissioners, District Magistrates, District Court Premises, Police Stations, Municipal Corporation Offices, Development Authorities Offices and prominent places of the city. (ii) A toll free number shall be provided to the citizens to make the complaints. If a loudspeaker, public address system, DJ, a Musical Instrument, a sound amplifier or any sound producing instrument is used beyond the permissible limit of sound, a person can make a complaint on telephone number 100 to police or toll free number provided by the authorities.

The concerned Police of the area will immediately visit the spot and shall measure the noise level by the equipment (Noise meter application) supplied to it. If it is found that there is violation of Rules, 2000 it will stop the nuisance forthwith and shall inform the appropriate authority regarding complaint and action taken by it. The authority shall take action against offender in terms of Rule 7 of Rules, 2000. The name and identity of the complainant shall not be disclosed to the wrong doer or to any person. Under Rule 7 of Rules, 2000 an oral complaint can be made. All the complaints received by the Police under Rule 7 of Rules, 2000 shall be maintained in a register and a copy thereof shall be forwarded to the competent authority. The action taken shall be recorded by the Police in the register. (iii) Under the Rules, 2000, no permission for DJ shall be granted by the authority for the reason that noise generated by DJ is unpleasant and obnoxious level. Even if they are operated at the minimum level of the sound it is beyond permissible limits under the Schedule of the Rules, 2000.

⁵⁴ Writ (C) No. 1216 of 2019 delivered on 20.8.2019, available at: <https://indiankanoon.org/doc/137484462/#:~:text=Sushil%20Chandra%20Srivastava%20And%20...,Others%20on%202020%20August%2C%202019&text=HIGH%20COURT%20OF%20JUDICATURE%20AT,Case%203A%2D%20WRIT%20%2D%20C%20No.&text=This%20writ%20proceedings%20has%20been,residential%20area%20regardless%20of%20time.> (last visited on Jan. 26, 2022).

A DJ is made up of several amplifiers and joint sound emitted by them is more than thousand dB(A). They are serious threat to human health particularly children, senior citizens and patients admitted in the hospitals. (iv) The team constituted by the District Magistrate shall make regular visit of their area particularly before commencement of any festival and apprise the organizers regarding compliance of the Rules, 2000 and the directions of Supreme Court and this Court. (v) All places of the worship of all religion shall be bound by the provisions of the Rules, 2000 and directions issued by the Supreme Court and this Court. Any breach of the Rules, 2000 shall be treated to be violation of fundamental right of a citizen. (vi) The District Magistrate/ Senior Superintendent of Police shall convene a meeting before commencement of festivals like Dussehera/ Durga Puja, Holi, Shab-e-barat, Muharram, Easter and Christmas festival with organizers and representatives of civil society, to impress upon them to observe the law strictly and in the event of failure the legal consequences that may follow. (vii) Whoever fails to comply with or contravenes any of the provisions of Noise Pollution Rules shall be liable for a penalty in terms of section 15 of the Environment (Protection) Act, 1986. Non-compliance of the rules attracts the imprisonment for a term which may extend to five years and fine which may extend to Rs.1,00,000/-.

It is the duty of the authorities of the State to ensure that the offences under Section 15 of the Environment Protection Act, 1986 are duly registered. (viii) The State Government is directed to categorize the areas in all the cities of State into industrial, commercial, residential or silence areas/zones for the purpose of implementation of the noise standard in terms of Rule 3(2) of Rules, 2000. A fresh exercise be conducted in the light of definition provided under Rule 2(e) and (f) of Rules, 2000. We find that in Prayagraj the zones have been made in breach of the above mentioned Rules. (ix) The competent authority under the Rules, 2000 and the SHO /Inspector of concerned Police Station are charged personally with the duty of ensuring compliance of the order of the Supreme Court, extracted above, the Rules, 2000 and this order, failing which they shall be answerable to this Court in contempt jurisdiction. We grant liberty to any aggrieved person to approach this court for appropriate order for compliance of the above order/directions.”

In *Hardeep Singh v. SDMC*,⁵⁵ it was alleged that “DJs, sound systems, community address

⁵⁵ See, Order of the National Green Tribunal regarding noise pollution, Delhi, 12.02.2019, available at:

systems were used at marriages or other events, and that noise was generated at irregular times that adversely affected the safety of people.” The National Green Tribunal (NGT) held that “the authorities of Delhi Government have failed to comply with the directions of the Green Tribunal and therefore directed the Government to deposit a sum of Rs. 5 Lakhs with the Central Pollution Control Board (CPCB) within a week and granted a month’s time to the authorities to file a compliance report, for the failure of the statutory authorities of the government in controlling the noise pollution as per statutory mandate of the Noise Pollution (Regulation and Control) Rules 2000.”

CONCLUSION

Noise has become a great nuisance these days. Its excessive presence in the environment leads to noise pollution. Urbanization, industrialization and advancement of science and technology are the leading causes of the problem of noise pollution. It is posing a serious challenge to quality of life of the people. Noise is held as an unavoidable by-product of industrialisation and it is increasing rapidly with the advancements in industrialisation. Noise pollution has not gained serious public concern because of public unawareness regarding its serious ill effects. Even people are unaware that noise pollution is a type of pollution. Therefore, Indian judiciary has not confronted with noise pollution cases in large numbers. The degree of noise pollution is always relative and varies with respect to a person and place.

India is a secular country with different culture and religion. Article 25(1) of the Indian constitution provides that a person is free to profess, practice and propagate religion and the state cannot interfere but on the other hand article 25(2) also provides that this right is not the absolute right and restrictions can be imposed if matter is related to public order, morality or public health. It means one cannot use sound system or other instruments for practice of religious activity if the same amounts to unreasonable interference in the peaceful enjoyment of others’ rights.

However, some judicial decisions on noise pollution make it amply clear that the Indian

http://niohenvis.nic.in/newsbulletin/Feb2019/Feb%202012,%202019_Order%20of%20the%20National%20Green%20Tribunal.pdf (last visited on Nov. 14, 2021).

judiciary has taken noise pollution seriously. The legislature has also responded well and created the Noise Pollution (Control and Regulation) Rules, 2000. However, as pointed out by the Supreme Court, “there is lack of awareness as well as implementation of these rules.” There is also a need for a specific legislation to control and prevent noise pollution. Therefore, the need of the hour is to create awareness among the people about the noise pollution and its effect on their health. Now it’s duty of every citizen, whatever be his religion or culture to make full efforts to prevent noise pollution. It is also the duty of the executives to implement the laws in their true spirit so that the people could enjoy a pollution free environment.

The scientists have opined that trees and plants are good absorbers of sound and they dissipate sound. Planting trees along the streets may be very helpful to contain traffic noise. Further, people may be encouraged to fit efficient mufflers or silencers to their vehicles to reduce noise.
