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**“UNMUTING THE NOISE LAWS AND BALANCING TRANSGRESSORS AND
CAPTIVES RIGHTS”**

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ABSTRACT

Noise Pollution is a serious environmental and health hazard which beyond certain limits affects all the living beings physiologically, psychologically and also causes behavioural changes. With the advent of rapid industrialization and technological advancements there are infinite sources of noise pollution. Despite this it is the least addressed environmental issue. There is no concrete legislation aimed at regulating and curbing this menace and the scattered provisions under different laws fail to prevent it before its inception but merely deals with its aftermaths. The Noise Pollution (Regulation and Control) Rules 2000, aims to regulate and control the noise pollution and maintain the quality standards with respect to noise but it has proved to be grossly inadequate mainly due to inefficiency on the part of authorities entrusted with its implementation and the administrative framework. The noise pollution has been regarded as ‘nuisance’ under Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Law of Torts and the liability for nuisance is usually imposed as per provision of these laws. In the U.K and the U.S.A the menace of noise pollution has been dealt with specific legislations, federal regulations, ordinances, state regulations and municipal bye-laws. These regulations impose strict monetary penalties, provide an effective administrative framework and

efficaciously address the modern contours of noise pollution. Use of loudspeakers and sound amplifiers on various religious and cultural occasions is a major source of noise pollution. Such actions have been justified by the transgressors as exercise of fundamental right of free speech and expression or right to practice and propagate one's religion and sometimes even right to carry out trade and business. Though the judiciary has negated this proposition by interpreting the right to a healthy environment and right not to be a captive listener as fundamental rights as a part of freedom of speech and expression and right to life and liberty respectively. The paper attempts to balance the interests of transgressors with those held captive.

INTRODUCTION

'Sound' has been the instrumentality of expression of our emotions, opinions, beliefs since antiquity. From battlefields to ceremonies it has been used as a tool of expression but when this sound becomes a reason for pain and annoyance, it is referred to as 'noise'. It was previously confined to a few areas like factories and mills, but today it engulfs every nook and corner of the globe.¹ Since the industrial revolution and India's rapid industrialization, noise has been an invader in the daily lives of people and a major reason for environmental degradation. The post independence era didn't focus on environmental protection and the thrust was solely on agricultural, economic and industrial development. It was only in the eighties during the sixth and seventh five year plan; some concrete steps were taken for environmental protection. Stress was laid on strengthening of institutional and legal mechanisms, it was during this period The Environment Protection Act, 1986 was enacted. Since then there have been attempts for environmental protection, with some progress in fight against air and water pollution but the jeopardy of noise pollution hasn't received much attention. The condition has worsened in the recent decades and the primary reason which can be attributed to the present state of affairs is the scarcity of social and legal measures, except for some recent legislations which have proved to be grossly inadequate² and failure on the part of public authorities to bear the responsibility. They all have escaped the liability by capitulating to noise pollution as a consequence of technological advancement. Most noise beyond certain limits is considered to be nuisance and

¹ R.S. GAHLAN, ENVIRONMENT ADMINISTRATION, LAW AND JUDICIAL ATTITUDE 430, (Prof. Paras Diwan ed., Deep Publications 1992).

² James.L.Hildebrand, *Noise Pollution: An Introduction t the Problem and an Outline for Future Legal*, 70 Columbia. L.R 656, (1970).

is dealt under law of torts, I.P.C etc. These stray provisions ostensibly appear to be adequate but fail to achieve the intended objectives mainly because they deal with the aftermaths of noise pollution but make no attempts to control it before its inception. Though the Noise Pollution (Regulation and Control) Rules, 2000 lays down rules restricting the use of noise amplifying instruments but due to ineffective implementation, lack of concern on behalf of authorities and citizens, it has not been able to achieve the intended objectives. One of the major causes of noise pollution is use of sound amplifying instruments and other machinery emanating excessive noise under the garb of fundamental rights. The paper adopts a reconciliatory approach and tries to balance the exercise of fundamental rights to create noise with the greater public good and right to a safe and healthy environment. The paper demystifies the term Noise Pollution and throws some lights on the disastrous effects of Noise Pollution.

MEANING AND DEFINITION OF NOISE POLLUTION

The word 'Noise' has been derived from Latin word '*nausea*' meaning seasickness.³ It is an unwanted or undesired sound and is the most pervasive pollutant today. In the words of J. Tiffin, "*Noise is a sound which is disagreeable for the individual and which disturbs the normal behaviour of an individual*". The perception of noise differs from person to person depending on myriad psychological factors like the sweetest music may sound like a pneumatic riveting hammer to a person who is trying to sleep. In other words, any sound may be noise if circumstances cause it to be disturbing.⁴ Pollution from a legal point of view can be said to be wrongful contamination of environmental constituents whether it is water, air, soil or material injury to the rights of individuals. It is an atmospheric pollution which in excess of certain levels causes various psychological and other health problems like deafness and imbalance of life. Environmental pollution from a legal perspective is the presence of environmental pollutants which may be solid, liquid or gas in such concentration which is injurious to the environment⁵ and to all forms of life.

³ What is Noise available at <https://www.fceia.unr.edu.ar/acustica/comite/whatisn.htm>, accessed on Mar. 25, 2020, 11:13 a.m.)

⁴ John Hancock, Noise Abatement at Municipal level, 7 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 483, 485 (1973).

⁵ Section 2 (b) and Section 2 (c) of Environment Protection Act, 1986.

CAUSES AND EFFECT OF NOISE POLLUTION

Amongst myriad sources of noise pollution, they can be divided as Industrial sources and Non-industrial sources. Other sources of noise pollution may include noise from construction works, traffic noise including engine and horn, aircraft, surface transport including train, radio, television and most importantly noise from loudspeaker and fire cracker etc. The use of loudspeakers and firecrackers on various religious occasions are not only a source of annoyance to the general public but also contributes significantly towards the menace of noise pollution. As in other areas of environmental pollution, the adverse effects of noise pollution are multivariate and interrelated.⁶ While it can be evidently proved that exposure to excessive noise causes hearing impairment but it becomes a more difficult task to prove the subjective effects of noise pollution as we become acclimatized to some level of noises that we become less aware of their subjective effects. Noise is a harsh sound or vibration which is irritating to the ear and causes annoyance and fatigue to a person thereby resulting in low performance, low efficiency and frequent errors. It may also cause tension in muscles, nervous irritability and strain. The noise reaction varies to a large extent on different individuals.⁷ In most of the cases the ascertainment of sound as noise is just a point of view and depends on subjective factors such as familiarity and personal attitudes. Hence even loud music may be considered melodious by a listener whereas minute scratching or a weak sound may be considered as noise by others.⁸

LEGISLATIONS AND LAWS RELATING TO NOISE POLLUTION

Law is an instrument of social change and legislature is the authority in control of law- making.⁹ In India there is no law exclusively regulating the menace of noise pollution unlike in other common law countries where there are specific laws regulating noise pollution. There are some stray provisions under various statutes and the Noise Pollution (Regulation and Control) Rules, 2000 but the problem is they only address effects of noise pollution but do not devise any mechanism for curbing this menace.

⁶ Hildebrand, *Supra* note 1, at 656.

⁷ Nigam S. Srivastava & N.K.Pandey, *Noise Pollution and Abatement* , 15 CHEMICAL ERA 4, 9 (2008).

⁸ Gahlan, *Supra* note 2, at 434.

⁹ Myneni, *Supra* note 12 at 266.

PROVISIONS UNDER INDIAN PENAL CODE 1860.

Sections 269 to 294 of I.P.C deals with various forms of nuisances. A person is guilty of public nuisance if his act or omission poses danger or causes annoyance to the people of a vicinity.

¹⁰An act of common nuisance is not excused on the ground that it causes some convenience or advantage. The offender is punishable with fine of Rs 200 ¹¹or a simple imprisonment for six months or both in case of a repeat offender. ¹² The menial amount of fine and absence of provision of sentence of imprisonment has a decelerating effect. Also the attitude of the higher judiciary has been lukewarm towards nuisance by noise. In *Ivour Hyden and Others v. State of Andhra Pradesh* ¹³ the accused were acquitted for the offence of playing radio at excessive volume. The court held that it was too trivial to be taken cognizance and was an excusable offence under section 95 I.P.C. Mostly nuisance by noise is not regarded as public nuisance by the courts on the ground that it does not affect the public at large.¹⁴ Where the accused were facing charges under Sections 186, 290 and 353 of the IPC which are non-compoundable offences, the court held that offence was not heinous and serious and since the parties had amicably resolved their differences, it would be against the interest of justice to not quash the criminal proceeding and therefore, the case was quashed. ¹⁵ There is a settled principle in common law countries to hold the noise which causes annoyance, as public nuisance. ¹⁶ It has become inevitable to construe the provisions in consonance with contemporary landscape.

PROVISION UNDER CRIMINAL PROCEDURE ACT, 1973.

A man's home is his castle which cannot be invaded by toxic fumes, or tormenting sounds is the principle recognised under Section 133(1)(b) of CrPC¹⁷. It empowers an executive magistrate to issue an order restraining a person from committing nuisance on receipt of report or evidence of such commission. ¹⁸ Violation of an order under this section cannot be justified on the ground that it provides livelihood to some persons as the right to a safe environment free from noise is more important than the right to livelihood.¹⁹ Nuisance created by operation of

¹⁰ The Indian Penal Code 1860 sec. 268.

¹¹ The Indian Penal Code 1860 sec. 290

¹² The Indian Penal Code 1860 sec. 291

¹³ 1984 Cr LJ 16 (NOC) 30..

¹⁴ Dwarka Prasad v. B.K. Chowdhary, AIR 1950 Cal 349.

¹⁵ Krishna Lall Timsina v. Kanu Priya Rai, 2019 SCC OnLine Sikk 196.

¹⁶66 CORPUS JURIS SECONDUM, A COMPLETE RESTATEMENT OF ENTIRE AMERICAN AS DEVELOPED BY ALL REPORTED CASES 578, (Western Publishing Company 2011).

¹⁷ *Madhavi v. Thillakan* 1988 (2) K.L.T. 730.

¹⁸ The Criminal Procedure Code 1973 sec. 133

¹⁹ *Madhavi v. Thilakan*, 1988 (2) K.L.T. 730.

factory engines from 9 pm to 5 am²⁰, manufacturing of medicines in a residential locality with the id of installation of a boiler²¹ etc. is injurious to physical comfort of residents of the vicinity and attracts this provision. An action for public nuisance can be brought by any sufferer irrespective of the number of complainants.²² It cannot be said that it was a case where nuisance was created at a public place and jurisdiction under Sec.133 of the Criminal Procedure Code cannot be exercised by the Executive Magistrate.²³

LAW OF TORTS

Noise pollution is not actionable ipso facto under the Law of Torts but becomes actionable when it amounts to nuisance. Under law of torts, unreasonable interference with persons use or enjoyment of land amounts to nuisance. A person causing nuisance by noise can be restrained by injunction, irrespective of noise being the outcome of a business.²⁴ But not every noise amounts to nuisance. A balance has to be drawn between the right of the occupier to do what he likes with his own property, and neighbour's right not to be interfered with.²⁵ When running a flour mill in a noisy locality interferes with physical comfort of the resident, an injunction can be issued to restrain the defendants from committing nuisance.²⁶ But no injunction can be issued where, in addition to two power-looms in a locality there is lots of noise due to running of many other power looms as they are not substantially adding noise to the locality to warrant the conclusion of nuisance.²⁷ Liability for nuisance does not depend on the inconvenience or discomfort caused to a particular plaintiff, but on the fact that nuisance should be such that an ordinary man with reasonable prudence would be affected by it. Thus where a hypersensitive lady aged 66 years suffering from high blood pressure complained of nuisance caused by cutting and hammering of tin sheets from a business of making tin boxes, no relief could be provided to her as no other person in the neighborhood had lodged complaints in the matter.²⁸

As a general principle of law malice is not a prerequisite for establishing liability under law of torts but in some cases of nuisance by noise, a deviation has been made from general rule. Thus due to imparting music lessons, defendants were not held liable for nuisance for the noise

²⁰ Raghunandan v. Emperor, AIR 1931 All 433.

²¹ Krishna Gopal v. State of MP, 1984 Cr.LJ. 396,

²² *Id.* at 397.

²³ Ramachandra Malojirao Bhonsle v. Rasikbhai Govardhanbhai Raiyani & Ors, 2000 SCC OnLine Guj 548.

²⁴ Bijayananda Patra v. District Magistrate, Cuttack, AIR 2000 Ori. 70

²⁵ Sadleigh DENfield v. O' Callegghan (1940) AC 880.

²⁶ Radhey Shiam v. Gur Prasad, AIR 1978 All 86.

²⁷ Ram Rattan v. Munna Lal, AIR 1959 Punj 217.

²⁸ Mohammed v. Health Officer, (1968) 1 KLT 289.

produced beyond permissible limits, because the noise arose due to the lawful profession and without any malice.²⁹

THE ENVIRONMENT (PROTECTION) ACT, 1986

In furtherance of the discussions held at United Nations Conference on the Environment, at Stockholms in June, 1972 and, with the intent to lay down comprehensive law on environment protection and inculcate environmental ethics in every citizen THE ENVIRONMENT (PROTECTION) ACT, 1986 was enacted. This act confers power on the government of India to take measures to deal with various facets of pollution including noise pollution.³⁰ Section 2(b) of the act, defines “environmental pollutant” as concentration of such quantity any solid, liquid or gaseous substance which may be injurious to environment³¹. Section 2(c)³² The act defines “environmental pollution” as the presence of environmental pollutants in the environment. Though noise is not covered under this definition of environmental pollutant but this narrower aspect has been brought out in section 6(2)(b) of the Act, which refers to noise pollution. The section regulates the maximum allowable limits of concentration of various environmental pollutants (including noise)³³ and confers power on the Central government to lay rules in the matter.³⁴ Section 3 of the act confers the power on the Central government to take measures to protect and improve the environment.³⁵ The Central Government in exercise of powers conferred under section 3, laid down Environment (Protection) Rules, 1986, which inter-alia regulates the maximum allowable limits of various environmental pollutants including noise.

THE NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000

In exercise of power conferred under Section 3(2)(ii); Section 6(2)(b); and Section 25 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986, the Central Government laid down Noise Pollution (Regulation and Control) Rules, 2000 to regulate and control the noise pollution and maintain the quality standards in respect of noise. The Rules provide for air quality standards in respect of noise for industrial area,

²⁹ Christie v. Davey (1893) 1 Ch 316.

³⁰ Anirudh Kumar v. MCD, (2015) 7 SCC 779.

³¹ The Environment (Protection) Act, 1986 sec. 2(b)

³² The Environment (Protection) Act, 1986 sec. 2(c).

³³ The Environment (Protection) Act, 1986 sec. 6(2)(b).

³⁴ The Environment (Protection) Act, 1986 sec. 6(2).

³⁵ The Environment (Protection) Act, 1986 sec. (3).

commercial area, residential area and silence zone both during day time and night time.³⁶ The categorisation of such areas shall be undertaken by respective State Governments³⁷, who shall also undertake measures for abatement of noise emanating from myriad sources.³⁸ Under these rules an area of not less than 100 meters around hospital, educational institutions and courts may be declared as silence zone by the state government³⁹ and the exemption from restriction on the use of loudspeakers shall not apply to these silence zones.⁴⁰ Rule 4 obliges the authorities concerned to ensure the enforcement of noise control measures and due compliance with air quality standards.⁴¹ Rule 5 imposes restrictions on the use of loudspeakers or public address system and sound producing instruments but with certain relaxations.⁴² Rule 5 A inserted through the 2010 amendment imposes restriction on use of Horns, Sound Emitting Construction Equipment and Bursting of Firecrackers in silence zones and residential areas during night time.⁴³ Rule 6 penalises the offender for violation of these rules in a silence zone.⁴⁴

It is incumbent on the state government to implement the aforesaid rules as the provisions of this rule are mandatory in nature and also no discretion has been vested on the authorities to relax the standards as the standards prescribed in the schedule are bare minimum requirement and there can be no relaxation.⁴⁵ An aggrieved person may make a complaint if noise exceeds tolerable noise limit prescribed under rules.⁴⁶ On receipt of such complaint and being satisfied as to veracity of the complaint, the authorities concerned shall pass necessary directions to prevent the menace.⁴⁷ It can be ascertained that the rule for control and prevention of noise pollution, may be ostensibly explicit and elaborate but the machinery required for monitoring and efficacious implementation of these rules and provisions is grossly inadequate.

THE CONSTITUTION OF INDIA

Indian Constitution embodies the principles of preservation and protection of environment and emanation of pollution. It obligates the state as well as citizens to protect and preserve the

³⁶ The Noise Pollution (Regulation and Control) Rules, 2000 rule 3.

³⁷ The Noise Pollution (Regulation and Control) Rules, 2000 rule 3(2).

³⁸ The Noise Pollution (Regulation and Control) Rules, 2000 rule 3(3).

³⁹ The Noise Pollution (Regulation and Control) Rules, 2000 rule 3(5).

⁴⁰ Farhad K. Wadia v. Union of India (2009) 2 SCC 442.

⁴¹ The Noise Pollution (Regulation and Control) Rules, 2000 rule 4.

⁴² The Noise Pollution (Regulation and Control) Rules, 2000 rule 5.

⁴³ The Noise Pollution (Regulation and Control) Rules, 2000 rule 5A.

⁴⁴ The Noise Pollution (Regulation and Control) Rules, 2000 rule 6.

⁴⁵ Dipendra Nath Sen v. State of W.B 2008 CHN 1017.

⁴⁶ The Noise Pollution (Regulation and Control) Rules, 2000 rule 7.

⁴⁷ The Noise Pollution (Regulation and Control) Rules, 2000 rule 8.

environment. Article 48 A, inserted through the 42nd amendment act, specifically addresses environmental protection and imposes an obligation upon the state to protect and improve the environment.⁴⁸ Article 51A(g) makes the protection and improvement of the natural environment a fundamental duty of every citizen.⁴⁹ Through its interpretation of Articles 32 and 21, in conjunction with the directive principles and fundamental duties sections, the Indian Supreme Court has recognized a constitutional right to environmental protection.⁵⁰

NOISE POLLUTION CONTROL UNDER OTHER CENTRAL AND STATE LEGISLATIONS.

Section 11 Factories Act, 1948 protects workers from nuisance,⁵¹ which may also be considered to include nuisance from noise. The act in its third schedule under section 89 and 90 enlists certain diseases including the disease of hearing loss caused by noise.

Civil Procedure Code, 1908, under section 91 provides for suit of declaration and injunction or any other relief as may be deemed fit in case of public nuisance or any other wrongful act likely to affect the public.⁵²

NOISE POLLUTION CONTROL LAWS IN USA

Unlike India, in the USA, apart from federal regulations, ordinances, state regulations and municipal bye laws, The Noise Control Act, 1972 specifically deals with menace of noise pollution. The act makes it the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare and for that purpose lays down Federal noise emission standards.⁵³ Section 4901 of this act recognizes noise as a growing danger to the health and welfare of the nation's population.⁵⁴ The act provides a slew of measures for curbing noise pollution like identification of major sources of noise,⁵⁵ defining

⁴⁸ The Constitution of India ,1950 Art. 48 A.

⁴⁹ The Constitution of India ,1950 Art. 51A.(g).

⁵⁰ Deepa Badrinarayana, *The Right to Environmental Protection: What We Can Discern from the American and Indian Constitutional Experience*, 43 BROOK. J. INT'L L 75, 82 (2017).

⁵¹ The Factories Act, 1948 sec 11.

⁵² The Civil Procedure Code, 1908 sec.91.

⁵³ Noise Control Act, 42 U.S.C. § 4901(b) (1972).

⁵⁴ Noise Control Act, 42 U.S.C. § 4901 (1972).

⁵⁵ Noise Control Act, 42 U.S.C. § 4904 (1972).

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noise emission standards for products distributed in commerce⁵⁶, aircraft noise standards,⁵⁷ labelling of products to give prospective users the notice of level of noise the product emits⁵⁸ and prohibition of certain acts as per the provisions of the act.⁵⁹ Any person in contravention of acts prohibited under paragraph (1),(3),(5),(6), of 4909(a)⁶⁰ can be punished with a fine of not more than \$ 25,000 per day or imprisonment of not more than one year or both and in case of second conviction the a fine of not more than \$50000 per day and imprisonment of not more than two years or both ⁶¹ Section 4911 provides that any person may commence a civil suit for the alleged violation of noise control requirement and the district court shall have jurisdiction to award damages and cost of litigation.⁶² Till 1970's all activities relating to federal noise control were coordinated by EPA through its office of noise abatement and control. However in 1982 the onus was shifted to state and local government for controlling noise pollution and consequently EPA phased out of office funding. However, the Noise Control Act of 1972 and the Quiet Communities Act of 1978 were never rescinded by Congress and remain in effect today, although they are essentially unfunded. ⁶³

NOISE LAW IN UNITED KINGDOM

In the United Kingdom laws for pollution control are as old as their history.⁶⁴ The Noise Abatement Act, 1960, of U.K regulates noise and vibration with a view to their abatement. Section 1 of the act declares noise nuisance to be statutory nuisance for the purpose of part III

⁵⁶ Noise Control Act, 42 U.S.C. § 4905 (1972).

⁵⁷ Noise Control Act, 42 U.S.C. § 4906 (1972).

⁵⁸ Noise Control Act, 42 U.S.C. § 4907 (1972).

⁵⁹ Noise Control Act, 42 U.S.C. § 4908 (1972).

⁶⁰ Noise Control Act, 42 U.S.C. § 4909 (1972).

§4909. Prohibited acts(a) Except as otherwise provided in subsection (b) of this section, the following acts or the causing thereof are prohibited: (1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4905 of this title which is applicable to such product, except in conformity with such regulation. (3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4907(b) of this title (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation..(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 4908 of this title which is applicable to such product. (6) The failure or refusal by any person to comply with any requirement of section 4910(d) or 4912(a) of this title or regulations prescribed under section 4912(a), 4916, or 4917 of this title.

⁶¹ Noise Control Act, 42 U.S.C. § 4910(a) (1972).

⁶² Noise Control Act, 42 U.S.C. § 4911 (1972).

⁶³ EPA History: Noise and the Noise Control Act, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Mar. 29, 2020, 11:25 A.M.), <https://www.epa.gov/history/epa-history-noise-and-noise-control-act>

⁶⁴ Dr. VIJENDRA MAHANDIYAN, ENVIRONMENTAL NOISE POLLUTION (CAUSES, EVILS, LEGISLATIONS AND CONTROLS) 185-186 (Deep and Deep Publications Pvt. Ltd. 2006).

of Public Health Act, 1936.⁶⁵ Section 2 of the act prohibits the use of loudspeakers on streets from 9 p.m. to 6 a.m. and also restricts their use for the purpose of advertising any entertainment, trade or business with certain exceptions to acts of public importance.⁶⁶ This law obligates the local council to investigate complaints of noise coming from fixed premises such as factories, shops, pubs, dwellings and stationary vehicles.⁶⁷ The proceeding for an offence under this act in England and Wales may be brought by any local authorities within whose jurisdiction the case arose and in Scotland, prosecution may happen in any court of summary jurisdiction.⁶⁸ This act is supplemented by Part III of Environment Protection Act, 1990, which makes noise emitted from premises, vehicle, machinery or equipment that may be detrimental to the health to be statutory nuisance.⁶⁹ Statutory Nuisances are specific nuisances that have been listed within the Environmental Protection Act 1990.⁷⁰ Shared regulatory services have been vested with the power to deal with complaints relating to statutory nuisance. The Control of Noise at Work Regulations 2005 (the Noise Regulations) aims to ensure that employees are protected from excessive noise at workplaces. There are some other local bye-laws which are enforced by local authorities and include noise emissions from various sources like shouting, singing, fireworks, vehicles etc.

BALANCING TRANSGRESSORS AND CAPTIVES RIGHT

Imposition of restraint on acts causing excessive noise has been a bone of contention on several occasions. Such restraints and prohibition have been challenged on the ground of interfering with the fundamental rights of free speech and expression, right to practice religion and to carry on any occupation, trade or business. No doubt these fundamental rights are cherished human rights and have universal acceptance. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights etc. recognize these rights as basic human rights. But the doctrine of non-absoluteness of any fundamental rights and the principle that every right engulfs in itself a duty to respect others right for ensuring mutual compatibility and conviviality, is forgotten. There are catena

⁶⁵ The Noise Abatement Act, 1960 sec. 1 (U.K.).

⁶⁶ The Noise Abatement Act, 1960 sec. 2 (U.K.).

⁶⁷ Noise Pollution, ENVIRONMENTAL POLLUTION U.K. (Mar. 31, 2020, 10:05 P.M.), <https://www.environmental-protection.org.uk/wp-content/uploads/2016/03/Noise-Pollution.pdf>.

⁶⁸ The Noise Abatement Act, 1960 sec. 2(4) (U.K.).

⁶⁹ Environmental Protection Act, 1990 sec. 79 (U.K.).

⁷⁰ Common Law Nuisance and Statutory Noise, SHARED REGULATORY SERVICES (Apr. 01, 2020, 8:12 P.M.), <https://www.srs.wales/en/Environmental-Health/Noise-and-Air-Pollution/Common-Law-Nuisance-and-Statutory-Nuisance.aspx>

of judgment of various High-Courts and even the Supreme Court stating the imposition of restriction to be valid. In this section an attempt has been made to reconcile the imposition of restraints on acts transgressing other's right with the fundamental rights of transgressors.

The use of loudspeakers and sound amplifiers behind the veil of freedom of speech and expression and freedom to practice one's religion has been the prime bone of contention between the exercise of fundamental rights and restriction on such use. In *Masud Alam v. Commissioner of Police*⁷¹ The question before the court was whether use of loudspeakers for calling of Azan five times a day could be justified on the grounds of religious purpose. It was held that the use of loudspeakers which caused disturbance in the area could not be justified on the ground that the same was in connection with religious purpose. Though the state protects religious faith and belief but if religious belief runs counter to public order, morality or health, then the religious practices must give way to the good of the people of the state as whole.⁷² It's evident that the right to use loudspeakers for the purpose of practicing, professing or propagating religion can be reasonably restricted if it causes noise pollution as the right to practice one's religion is subject to public order, morality and health.⁷³ Undisputedly no religion prescribes that prayers be performed by disturbing the peace of others nor does it preach that they should be through Voice- amplifiers or beating of drums.⁷⁴ The right to use loudspeaker or public address system beyond 12 O'clock in the night even on religious and cultural occasions is not permissible and such restriction shall not contravene any fundamental rights.⁷⁵

In *Arjun Gopal v. Union of India and Others*⁷⁶ The Supreme Court imposed a temporary restriction on the sale of firecrackers and explosives used in manufacture of firecrackers as their availability constituted a serious invasion on fundamental rights conferred on citizens by Part III of the constitution. The court held that there is no inherent fundamental right to manufacture, sell and deal with fireworks which generate pollution and endanger public health and order. Such restriction shall not be construed to contravene with the defendant right to trade and business. It may give pleasure to one or two persons who burst it but others have to be captive listeners whose fundamental right guaranteed under Article 19(1)(a) and other provisions of the constitution are taken away, suspended and made meaningless.⁷⁷ Compulsory

⁷¹.AIR 1956 Cal 9.

⁷² State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

⁷³ Free Legal Aid Cell Shri Sugan Chand Agarwal alias Bhagatji v. Govt of Nct of Delhi, AIR 2001 Delhi 455.

⁷⁴ Church of God (Full Gospel) in India v. K.K.R Majestic Colony Welfare Association and Ors, AIR 2000 SC 2773.

⁷⁵ K.V Pavithran v. The District Superintendent of Police, Kannur and ors., AIR 2005 Ker. 177

⁷⁶ 2018 SCC OnLine SC 2118.

⁷⁷ Burrabazar Fireworks Dealers Association v. Commissioner of Police, Calcutta, AIR 1998 Cal 121.

exposure of unwilling persons to dangerous and disastrous levels of noise would amount to a clear infringement of their constitutional guarantee of right to life under Article 21.⁷⁸

In *Church of God (Full Gospel) in India v. K.K.R Majestic Colony Welfare Association and Others*,⁷⁹ the Supreme Court held that no religion prescribes the performance of prayers through the use of voice amplifiers. The court stated that any activity which caused nuisance and inconvenience to the general public cannot be permitted in the name of religion. The spike in noise levels due to urbanization and globalization, beyond permissible limits would not give the license to others to further increase the noise levels through voice amplifiers. The rules restricting such acts are unambiguous but due to lack of awareness among citizens and enforcement authorities they are not efficaciously enforced.

In *Indu Lal v. State*⁸⁰ The question before the court was whether certain rules empowering the Commissioner and District Magistrate to prohibit the use of loudspeaker, were violative of the fundamental right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution. The court held freedom of speech and expression will include freedom to use loudspeakers as the fundamental right is not merely a right to use one's larynx but to convey one's views to another and the right to circulate those views to a large audience. The court in this case compared the freedom of press with that of freedom of speech and expression and came to the conclusion that the freedom of speech and expression carries with it the freedom to use loudspeakers but such right shall be subject to reasonable restriction. Hence the rules imposing the restriction were held to be valid. Public health demands control of such apparatus and the power to legislate in relation to matters of public health, the power to regulate the use of loudspeakers when the right of such users by the disregard of comfort of and obligation to others, emerge as manifest nuisance to them.⁸¹ In *Himmat Lal v. Police Commissioner*⁸² The Supreme Court has held that public health is a valid ground to restrict the use of loudspeakers. However such regulation should not be arbitrary, drastic and unreasonable where such powers are conferred without laying down any norms for their exercise.

In *Om Birangana Religious Society v. State of West Bengal*⁸³ The court held that Article 19(1)(a) provides fundamental right of freedom of speech and expression and this right is only

⁷⁸ P. A. Jacob v. Superintendent of Police, Kottayam, AIR 1993 Ker. 1.

⁷⁹ AIR 2000 SC 2773

⁸⁰ AIR 1963 Guj. 259.

⁸¹ State of Rajasthan v. G. Chawla AIR 1959 SC 544.

⁸² AIR 1973 SC 87.

⁸³ (1996) 2 CALLT 474 HC.

subject to restrictions imposed under Article 19(2) of the Constitution. No fundamental right can be exercised by depriving others of their rights. Freedom of speech is guaranteed to every citizen so that he may reach with the user of microphones during main festivals but they have to strictly follow the restrictions imposed on the use of microphones in accordance with the direction and within fixed time limits.

In *Forum, Prevention of Env'n. & Sound Pollution v. Union of India*⁸⁴ it was held that while one has a fundamental right of speech others have a right to listen and decline to listen. Nobody can be compelled to be a captive listener and no one can make his voice trespass into others ears and indulge in aural aggression. The use of artificial devices to increase volume of speech while compelling other unwilling people to hear such noise violates one's right to a peaceful, comfortable and pollution free environment guaranteed by Article 21. The right to life enshrined under Article 21 is not of mere survival or existence but includes a right to live with full human dignity. This right extends to preventing noise as pollutants and living in a peaceful and comfortable environment. The right to life encompasses in itself the right to enjoy a pollution free environment.⁸⁵ No one can claim a right to cause noise even in his own premise which would travel beyond his precincts and cause nuisance to others.⁸⁶

The freedom to carry on business or trade ceases to exist where a noise is considered to be a nuisance and it is no defence to contend that it was in consequence of a lawful business or arise from lawful amusements or from places of religious worship.⁸⁷ In *Dhanna Lal v. Chittu Singh* perpetual injunction was granted restraining the defendants from running a flour mill close to the house of petitioners as the noise from the mill seriously interfered with the rights of petitioners.⁸⁸ In balancing the vital interest of the vast majority of citizens against the commercial interest of a few, the balance must tilt heavily in favour of citizens in general.⁸⁹ It is always the public interest which prevails and the individual interest is subservient to the public interest.⁹⁰

In *Maulana mufti Syed Md.. Noorur Rehman Barkati v. State of West Bengal*⁹¹ It was held that the citizens of this country must be allowed to live in a society which is peaceful, free from

⁸⁴ AIR 2005 SC 3136.

⁸⁵ Subhash Kumar v. State of Bihar (1991) 1 SCC 598.

⁸⁶ *In re Noise Pollution (V)*, (2005) 5 SCC 733.

⁸⁷ *Ram Lal v. Mustafabad Oil and Cotton Ginning* AIR 1968 P&H 399

⁸⁸ AIR 1959 SC 544.

⁸⁹ *Arjun Gopal v. Union of India and Others*, 2018 SCC OnLine SC 2118.

⁹⁰ *Shobana Ramasubramanyam and etc. v. The member Secretary, Chennai Metropolitan Development Authority and Others*, AIR 2002 Mad. 1259(DB).

⁹¹ AIR 1999 Cal 15.

mechanical and artificial sound which creates a tremendous health hazard and adverse effect on them. Citizens have a right to live in society which is free from pollution. If the pollutants are encouraged, it would be the beginning of the end of the civilization. The court upheld the action of banning loudspeakers.⁹²

The best possible path seems to be to give a wider meaning to the phrase 'public order' to cover action for avoidance of excessive noise, seriously interfering with the comfort or convenience of a substantial number of persons.⁹³ We as responsible citizens, should remember that our right to swing our arms end where the nose of others begins and no right is absolute. Every right has an implied inherent limitation, especially when our right to do something restricts others to do something, or forces them to do something which they may not be willing to do.

CONCLUSION

Noise Pollution has been a totally neglected arena which has led to a spike in noise pollution levels in recent decades. There seems to be dearth and ineffectiveness of legislative and administrative framework pertaining to noise pollution and the available scattered provisions in various branches of law are inadequate, unscientific and crude. There is an important need for comprehensive legislation to regulate all aspects of noise pollution control and abatement. The act should provide different rules for tackling different kinds of noises arising from different sources and at the same time ensure uniformity in laws. Eco-Friendly techniques must be adopted for curbing noise pollution. Noise levels of automobiles and construction equipment should be standardized and automobiles producing sounds beyond permissible limits should not be allowed on the roads. Machinery must be designed and manufactured in such a way that it does not produce sound beyond permissible limits. Special provisions must be incorporated under the factories act for the control of noise in industries. The amount of penalty for causing noise pollution should be substantially increased as in the Noise Control Act, 1972 in the U.S.A. The Indian laws also fail to regulate the modern contours of noise pollution which is sine qua non for curbing this menace

⁹² Id.

⁹³ P.S. Seema, *Noise Pollution - Human Rights and Constitutional Dimensions*, 10 COCHIN UNIVERSITY LAW REVIEW 80, 92 (2003).

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Familiarity with the scientific intricacies of noise pollution and the legal technique of statutory control is absolutely essential for both the legislators and law officers of the legislative bodies⁹⁴. Relentless enthusiasm and cooperation on part of the three organs of government is *sine qua non* for achieving the desired goal of a pollution free environment. . In the *BurraBazar Fireworks case* the High Court held that no person had the right to manufacture firecrackers which produced noise beyond 65 decibels which was the then permissible limit under Environment Protection 1986. The fireworks dealers successfully lobbied the Union Ministry of Environment and Forest to amend Schedule I to the Environment Protection Rules, by introducing statutory noise standards for fire crackers that allow noise levels up to 125 decibel.⁹⁵ Such acts on behalf of any organ of the government are betrayal and tend to weaken the efforts of other organs.

Public Awareness among the masses about the ill effects of noise on the environment as well as on people should be created through educational institutes, seminars, conferences, coordination between government and organizations working for pollution free environment. Attempts should be made to create awareness at a younger age by devising suitable courses of study and preparing textbooks to be handed down to the children whilst they are still in school. This may help in moulding their minds as environmentally concerned citizens.

Through various judicial pronouncements it has been made abundantly clear every citizen has a fundamental right to a pollution free environment forming a part of the right to life under Article 21 of the Constitution. Houses of God should be kept peaceful and noise free as it is rightly said that god is not deaf.⁹⁶ It must be remembered that it is not only the duty of the state to protect the environment, we as concerned citizens have a constitutional duty to protect and preserve the environment, by virtue of Art. 51-A(g) of The Constitution of India.

⁹⁴ H.G. Balakrishna, *Noise Pollution Control-A Need of the Day*, available at http://14.139.60.114:8080/jspui/bitstream/123456789/1253/1/028_Noise%20Pollution%20Control.pdf

⁹⁵ SHYAM DIWAN & ROSENCRAZ ARMIN, ENVIRONMENTAL LAW AND POLICY IN INDIA 286 (2 ed. Oxford University Press 2002).

⁹⁶ Free Legal Aid Cell Shri Sugan Chand Agarwal alias Bhagatji v. Govt. of NCT Delhi, AIR 2001 Delhi 455.