

## Conferring the Rights to Air: A Way to Change Social Behavior in India

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### Abstract

*India is a land of celebrations in the name of national festival or religious festivals or victory of individual or team. By celebration we seek to be entertained and amused at the cost of natural resources. In 2017, the Allahabad High Court bench comprising Chief Justice DB Bhosale and Justice MK Gupta held that every citizen had the right to celebrate festivals in a peaceful manner. But now a day over celebration with fire crackers and loud sound are going into the vein of almost all life events whether big or small. In Ajay Goswami V. Union of India, the Supreme Court Upheld the right of adult citizens to entertainment notwithstanding that such entertainment may be inappropriate for children. On 23<sup>rd</sup> October 2019, the Supreme Court of India refused to impose blanket ban on sale of firecrackers but allowed the sale of low polluting green firecrackers which are within the permitted decibel limit and emission norms. This decision is in parallel with the existing bunch of environment protection legislation except the permission to use of green pollutants. These type of judgments and legislations are made to make the human being enjoy and the nature weep. The pollution level in New Delhi peaked on the morning just next day of Diwali celebration because of unbridled right to celebrations. On Monday, i.e. 25<sup>th</sup> November 2019, the Supreme Court accused the Centre and Delhi government of politicizing the issue and said that the city is no longer livable and had become worse than hell.*

**Key words:** *Green Firecrackers, pollutants, environment protection, emission norms, air and noise pollution, legal person, rights*

### I. Introduction

“The man of our time is losing the power of celebration. Instead of celebrating, he seeks to be amused or entertained. Celebration is an active state, an act of expressing reverence or appreciation. To be entertained is a passive state—it is to

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receive pleasure afforded by an amusing act or a spectacle. Entertainment is a diversion, a distraction of the attention of the mind from the preoccupations of daily living. Celebration is a confrontation, giving attention to the transcendent meaning of one's actions.”

*Abraham Joshua Heschel*

It reads like a perfect paragraph on our non-stop reasons of celebrations for entertainment. It is a tendency in human being that is to bury oneself in entertainment and amusement and forget the cost of such entertainment. In modern age the celebrations mean public demonstration with loud music, lightening of fire crackers, big gathering, shouting and feasting in bulk which remains behind waste food, noise and air pollution. It is like assault and rape of nature (Prakriti) without any repercussions from present legal system. Indian penal code punishes for crime against women, property and human being but what about the crime against nature and its resources? These resources are treated as universal property and anybody can explore it anytime without any sense of obligation towards their protection.

Around the world, firecrackers are increasingly becoming the way to celebrate important occasions or festivals. Whether it is New Year party or Diwali or Ramzan or wedding or winning of national sports or public or private inaugural events etc., fireworks are rapidly becoming part and parcel of these celebrations.

## **II. Fundamental Rights of Air**

The concept of legal personhood has always been applicable beyond human beings to corporations, state, temple, idols and other non-human entities, as they are considered as legal person for application of law. The importance of conferring legal personhood is that such a person becomes subject of rights and duties. The conferring rights to nature will extend legal personality to trees, rivers, lakes, mountains, air, water bodies and entire eco-system. This will lead to protection of environment as an entity with legal rights. Currently environmental laws only protect human beings if their rights are violated by environment degradation, no law protect the environment itself or punish the rapist of environment.

Article 21 of Indian Constitution says, no person shall be deprived of his life and liberty. The Supreme Court of India interpreted right to life to include right to

health, food, water, clean air, education etc. in simple terms, the right to life is imparted to person to live in dignity. Here person includes legal person not only human beings. If this right is also given to air then its dignity can be maintained and assault on it can be prohibited because human mind doesn't have any respect to its free surrounding unless disrespect calls repercussions by way of punishment or compensation. Fundamental Rights of Human being starts where the freedom of nature ends.

### III. What Indian Religion says on Personhood of Nature?

Every relationship is a two-way street. You give something and you take something. But our relationship with the nature is one way where you take everything in return of nothing.

Diwali was only festival the celebration of which festival was considered incomplete without the use of plenty of firecrackers. But now a days all religion people are enthusiastic about them that they start blowing up fire-crackers days and night before and after the day of festival. While firecrackers create beautiful patterns and lights, they are also composed of chemicals that, when burned, cause significant pollution.

According to Guru Nanak, conservation of nature ought not to be out of pity or because of the need to survive. Rather, ecosystems are as much a part of existence as we are aware of violation of human rights, so too should we be vigilant of ecological violations.<sup>2</sup> It says in Guru Granth Sahib:

*Air is our guru, water our father and the great earth is our mother;*

*Day and night are the male and female nurses, in whose lap the whole world plays.<sup>3</sup>*

Guru Nanak places nature on equal footing with human race, being the one to talk on nature's justice.

All the elements of nature are integral parts of the system of God's creation. All the parts of the system naturally draw from and give back to the whole. The sun

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<sup>2</sup> "Guru Nanak's Green Bani" by Gurwinder Kaur, The Speaking Tree, The Times of India Publication, Tuesday, December 17, 2019

<sup>3</sup> "Guru Nanak's Green Bani" by Gurwinder Kaur, The Speaking Tree, The Times of India Publication, Tuesday, December 17, 2019

lends stability to the earth and provides heat and light necessary for life to exist. Earth creates food from its soil for our nourishment and also holds essential minerals in its womb for a civilized lifestyle. The air moves the life force in our body and enables transmission of sound energy.<sup>4</sup> We humans too are an integral part of the entire system of God's creation. The air that we breathe, the Earth that we walk upon, the water that we drink, and the light that illumines our day, are all gifts of creation to us. While we partake of these gifts to sustain our lives, we also have our duties toward the integral system. Shree Krishna says that we are obligated to participate with the creative force of nature by performing our prescribed duties in the service of God. That is the yajña he expects from us.<sup>5</sup>

#### IV. Purpose of Environmental Legislations in India

The preamble of The Environment (Protection) Act 1986 puts emphasis on the protection and improvement of the environment. In due course of time, the Indian courts have widened the scope of the legislation so as to make the "polluter pays" to the victim of environment pollution and also costs to restore the disturbed ecology and environment. The constitution of India itself contains provisions for the protection and improvement of the environment under Art. 48A.<sup>6</sup> In *Hinch Lal Tiwari v. Kamla Devi*,<sup>7</sup> the Supreme Court has held that the material resources of the community like ponds, forests and mountain etc. are bounty of nature. They are responsible for maintaining ecological balance all over. Therefore they need to be protected for the healthy environment which enables people to enjoy quality of life which is the essence of fundamental right guaranteed under Art 21 of the Constitution. Further in *Anirudh Kumar v. MCD*,<sup>8</sup> the Supreme Court reiterated that anyone who wishes to live in peace, comfort and quite within his house has a right to prevent the noise as a pollutant reaching him and nobody can be compelled to listen and nobody can claim as his right to make his voice trespass into the ears or mind of others.

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<sup>4</sup> (Retrieved on 17<sup>th</sup> Jan, 2019 at 7pm ), <https://www.holy-bhagavad-gita.org/chapter/3/verse/10>.

<sup>5</sup> सहयज्ञाः प्रजाः सृष्ट्वा पुरोवाच प्रजापतिः |  
अनेन प्रसविय्यध्वमेष वोऽस्त्विष्टकामधुक् || 3:10|| Bhagwad Gita.

<sup>6</sup> Dr. S.C. TRIPATHI, ENVIRONMENTAL LAW, 25 (Central Law Publications, seventh edition 2019).

<sup>7</sup> 2001 (6) SCC 496.

<sup>8</sup> AIR 2015 SC 3136.

The government of India had set up a separate department of Environment in 1980 to carry out study and suggest the government about the causes and situation of environmental pollution from time to time. And various series of legislation pertaining to environment protection were enacted by the Parliament, but we still need a law to check the social behavior of people towards nature. Some people are not well versed with the threat to environment and other part of the people prefers to enjoy present at the cost of future. On a number of occasions, the Supreme court of India has emphasized that the environmental education should be imparted from the primary school to university level. In *M. C Mehta v. Union of India*,<sup>9</sup> the Supreme Court directed the central government and University Grant Commission to take appropriate steps to give effect to the guidelines laid down by the court for environmental awareness among the people.

#### **V. Green Celebration**

Firecrackers are often used to celebrate festivals, events, fairs and functions such as weddings because people love the colours and spectacular patterns of firecrackers. Firecrackers primarily contain sulphur nitrates, magnesium, nitrogen dioxide and carbon. However, they also contain added chemicals added to act as binders, stabilizers, oxidizers, reducing agents and colouring agents. To create the multi-coloured glitter effect the colours are made up of antimony sulphide, barium nitrate, aluminium, copper, lithium and strontium.

Experts say that being exposed to such noxious air for a sustained period can cause serious damage to lungs, especially for those who have respiratory problems. Dr. Loveleen Mangla, a pulmonologist and respiratory specialist with Metro Hospital in Noida says that such pollutants can damage generations if not controlled as soon as possible.<sup>10</sup>

The Central Pollution Board measured the National Air Quality Index in 2015 and discovered that at least eight states experienced extreme pollution and deteriorated air quality on Diwali night. In Delhi alone, the number of PM10 (Particulate Matter) particulates that are hazardous to health rose to two thousand microns per square meter. The limit recommended by the WHO or World Health Organization is forty times less than this number. In 2016, the Centre for Science

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<sup>9</sup> AIR 1996 SC 2715.

<sup>10</sup> Abhishek Anand, *Crackers leave Delhi gasping on Diwali*, INDIA TODAY, 29<sup>th</sup> October 2019.

and Environment, a Delhi based non-profit organization, conducted an exposure monitoring exercise at some places of Delhi for three hours on Diwali night. The CPCB standard of PM 2.5 in a day is  $60\mu/m^3$  and that for PM 10 is not more than  $100\mu/m^3$ . In the high density area of Delhi, it was observed that PM 2.5 concentration at night was initially  $872\mu/m^3$ , touching a maximum of  $1,270\mu/m^3$ . Similarly, PM 10 readings averaged at  $1,400\mu/m^3$ , reaching  $2060\mu/m^3$ . An indicative analysis showed that the air in Delhi at Diwali night was 15 and four times more dangerous than what CPCB calls 'severe'.<sup>11</sup> Northern India witnessed "Severe" category air quality for five days *i.e.*, 12 to 16 Nov 2019 which compelled the government to close all schools in the national capital, Haryana and its adjoining areas.<sup>12</sup>

In order to involve people in the effort, Government had launched a campaign called 'Harit Diwali and Swasth Diwali' during September 2017 involving over 2000 schools in Delhi and over two lakh schools in the country.

In 2018, just before Diwali, India's Supreme Court banned regular firecrackers for all festivals. It said that only 'green' crackers could be sold in the country. The Apex Court also fixed 2-hour daily slots for bursting eco-friendly crackers during Diwali. To comply with the order, the government raced ahead to release green firecrackers in 2018, but these were not found to be satisfactory. Therefore, many violations of the SC order were reported across India.

The eco-friendly crackers released by CSIR replace barium nitrate with potassium nitrate as the oxidant. This replacement will bring down emissions of particulate matter, as well as harmful gases like Nitrogen Oxide and Sulphur Dioxide. The crackers will also contain water or air, and dust suppressants that make pollutants settle down. The overall use of chemicals has also been reduced.<sup>13</sup>

## VI. Judicial View on Celebration of Festivals

In 2017, the Allahabad High Court bench comprising Chief Justice DB Bhosale and Justice MK Gupta held that every citizen had the right to celebrate festivals

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<sup>11</sup> Anisha Raman, *SC Judgement on Firerackers: Execution a Major Challenge*, <http://downtoearth.org.in>.

<sup>8</sup> After 5 consecutive days of 'Severe' air quality, AQI improves to 'Very Poor' in Delhi, India Today Web Desk, New Delhi, Nov 17, 2019.

<sup>13</sup> 9 How Govt. Plans to Take on Diwali Air Pollution With 'Green' Fire Crackers, by TWC India Edit Team on 8th October 2019

in a peaceful manner. But now a day over celebration with fire crackers and loud sound are going into the vein of almost all life events whether big or small. In *Ajay Goswami v. Union of India*, the Supreme Court Upheld the right of adult citizens to entertainment notwithstanding that such entertainment may be inappropriate for children

In *Arjun Gopal and Others v. Union of Indian* and others,<sup>14</sup> writ petition was filed on September 24, 2015 on behalf of three infants for banning the use, in any form, of firecrackers, sparkles and minor explosives, in any form, during festivals or otherwise. The opposite group consists of manufacturers of crackers, manufacturers' association, license holders and State of Tamil Nadu. Additionally, one interventionist, namely Indic Collective was also opposing the ban contending that burning of crackers during Diwali is a religious activity which is in vogue for time immemorial and, therefore, it should not be banned.<sup>15</sup> Studies by CPCB had categorically found that burning of crackers during Diwali was contributing to air as well as noise pollution in an alarming manner. The manufacturers and traders contended on Art. 19(1)(g) of the Constitution namely fundamental right to carry on business, a revenue of Rs. 6000 Crore per annum to the State as well as employment to large number of workers on which five lakh families sustain cannot be put in jeopardy by imposing a total ban.<sup>16</sup> After hearing the parties the court accepted that burning of crackers during Diwali is not the only reason for worsening air quality, at the same time, it definitely contributes to air pollution in a significant way. It also has acute psychological, mental and even physical effect on animals. In the application seeking intervention and directions (IA No. 68897 of 2018) filed by Gauri Maulekhi, the applicant has placed on record plethora of literature based on various studies depicting profound effect of noise/sound on the health of animals, extending to their neuroendocrine system, reproduction and development, metabolism, cardiovascular health, cognition and sleep, audition, immune system, DNA integrity and gene expression.<sup>17</sup>

In *Vellore Citizens' Welfare Forum* case, Supreme Court had banned the tanneries when it was found that they were causing immense damage to the environment. Thus, environment protection, which is a facet of Article 21, was given supremacy

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<sup>14</sup> Writ petition (Civil) No. 728 of 2015 & Ors.

<sup>15</sup> Para 15 of Writ petition (Civil) No. 728 of 2015 & Ors.

<sup>16</sup> Para 18(iv) of writ petition 2015.

<sup>17</sup> Para 30 of Writ Petition 2015.

over the right to carry on business enshrined in Article 19(1) (g). In striving balance between two contrary interest right to health and right to carry on business, the Supreme Court issued following directions:

- a) green crackers only would be permitted to be manufactured and sold.
- b) The manufacture, sale and use of joined firecrackers (series crackers or laris) is hereby banned as the same causes huge air, noise and solid waste problems.
- c) The sale shall only be through licensed traders and it shall be ensured that these licensed traders are selling those firecrackers which are permitted by this order.
- d) No e-commerce websites, including Flipkart, Amazon etc., shall accept any online orders and effect online sales.
- e) Barium salts in the fireworks is also hereby banned.
- f) PESO will ensure fireworks with permitted chemicals only to be purchased/possessed/sold/used during Diwali and all other religious festivals, of any religion whatsoever, and other occasions like marriages, etc.
- g) Extensive public awareness campaigns shall be taken up by the Central Government/State Governments/Schools/ Colleges informing the public about the harmful effects of firecrackers.
- h) On Diwali days or on any other festivals like GURPURAB etc., when such fireworks generally take place, it would strictly be from 8:00 p.m. till 10:00 p.m. only. On Christmas eve and New Year eve, when such fireworks start around midnight, i.e. 12:00 a.m., it would be from 11:55 p.m. till 12:30 a.m. only.
- i) An endeavor shall be made by the authorities to explore the feasibility of community fire cracking.

In 2018 the national capital witnessed its second-highest pollution level in December. The Central Pollution Control Board (CPCB) data showed the overall air quality index (AQI) at 446 while the Centre-run System of Air Quality and Weather Forecasting (SAFAR) gave a much higher AQI of 471.<sup>18</sup>

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<sup>18</sup> Diwali 2019: Supreme Court allows only 'anar' and 'phuljari' in Delhi to curb air, sound pollution; legal firecrackers to carry QR code, Oct 23, 2019, Firstpost.



In 2019, the fireworks manufacturers had requested permission for manufacture of fireworks with Barium substitute i.e., Barium Nitrate. This is said to reduce the pollution to the extent of about 25 to 30 per cent. SC declines the request on 11th April 2019 by saying the Petroleum and Explosive Safety organization (PESO) is looking into the matter for the best formulation that may be permissible for manufacture of firecrackers.

### **VII. Lag between Law and Social Behavior**

In the Constitution of India, it is clearly stated that it is the duty of the state to ‘protect and improve the environment and to safeguard the forests and wildlife of the country’.<sup>19</sup> It imposes a duty on every citizen ‘to protect and improve the natural environment including forests, lakes, rivers, and wildlife.’<sup>20</sup> Time and again the Indian Laws have taken a turn and tried adapting to the dynamics of the modern need. However, this transition phase has been proved miserable. There is always a certain difference between actual social behavior and the behavior demanded by the law. A lag appears when the law does not answer the needs arising from major social changes or when the sense of social obligation is not regulated by the significant laws or social behavioral changes occur and no parallel changes or adjustment processes take place in law.<sup>21</sup> The primary responsibility for changing the law is imposed on parliament and Courts.

### **VIII. Conclusion**

The violence being inflicted on natural resources is directly related to the enjoyment of life arising out of needs and greed for luxury. If we do not adhere to the principles of mother nature then the time is not so far when we would face the most antagonistic face of nature. The inefficient hierarchy of priorities in Indian life hinders our earth to attain its full potential. According to Supreme Court<sup>22</sup> environmental Justice could be achieved only if we drift away from the principles of anthropocentric to eco-centric. Many of environmental legislation and principles like sustainable development, polluter pays principle have their roots in anthropocentric principles. Anthropocentrism is always human interest focused and non-humans have only instrumental values to humans. The public

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<sup>19</sup> Article 48A of the Constitution of India.

<sup>20</sup> Article 51A(g) of the Constitution of India.

<sup>21</sup> VILHELM AUBERT, *SOCIOLOGY OF LAW*, 90 (Penguin Books Ltd., Harmondsworth).

<sup>22</sup> T.N. Godavarman Thirumulpad v. Union of India & Ors. 2012 (3) SCC 277.

trust doctrine which means that all humans have equitable access to natural resources treating all-natural resources as property of all humans has anthropocentric roots.