

Right to Live in Noise Free Environment and Role of Judiciary

Dr. Navin Prakash Verma¹

I. Introduction

Human beings for healthy life require comfort in every sense. Clean environment is the prerequisite for them. However, increasing technological and industrial advancements have not only helped our civilization but also at the same time led to environmental degeneration. Due to such advancements the problem of noise in recent years has increased and emerged as one of the important environment pollutions. Noise pollution is a growing health hazard in modern age which is detrimental to human health and progress. The menacing proportion in which it is growing in our environment these days is becoming a matter of concern for all of us.

Noise has always been with the human civilization but it was never so obvious, so intense, so varied and so pervasive as it is seen in this century. Noise pollution affects both health and behaviour of man. Its effects are multifaceted & inter related. It decreases the efficiency of Human Beings by causing irritation and lack of concentration. Noise Pollution causes certain cardiovascular diseases in human. It attacks on the person's peace mind. The noises are recognized as major contributing factors in accelerating the already existing tensions of modern living. These tensions result in certain disease like blood pressure or mental illness etc. Sometimes hearing impairment is the result of noise at the place of work.

In India, noise pollution is increasingly associated with urban life. Researches' have shown that noise level in the cities is rising by almost one decibel a year. Still we Indians in day to day life did not take noise pollution seriously. We are fond of noise pollution. Here in India every occasion or sentiment is manifested in a noisy manner be it a religious occasion, election or a family celebration. We think that God men's voice must be heard by all, day and night, and our Ratjagas, Akhandpaths and Azan must live loudspeakers and amplifiers; no one should be deprived from hearing God's and God men's voice and Gods too one far away beyond the hell and heaven. Our voice must reach them; otherwise our spiritual needs will remain unheard.

¹ Assistant Professor, Faculty of Law, University of Allahabad, Allahabad.
Email: navintvs@gmail.com.

We are not less noisy in our secular matters also. Our marriage and burial processions are accompanied by bands, twist and Bhangras. It will not be untrue to admit that Indians are noisy people.

On the other hand it is now perceived in many countries to be the major negative factor affecting the quality of life. In the United States, for example, a noise is ranked second only to crime. In West Germany, a 1979 poll indicated that 45 percent of the population believed that protection against noise is more important than building new roads. In Japan, there are currently more complaints about noise than about any other form of pollution.²

It is high time for us to realise the importance of protection against noise pollution. Our proactive judiciary has taken it seriously in its pronouncements. This paper deals with noise pollution with special emphasis over the role played by the Supreme Court.

II. Sources of Noise Pollution

While noise has been a problem since antiquity (the racket in Rome's streets so annoyed, Julius Caesar that he banned chariot traffic after dark), there is more concern about it today. Loudspeakers and traffic noise is the biggest nuisance in Indian cities. Most of the big cities of India have high level of noise pollution. The problem of noise in of urban areas is further aggravated by widespread use of loudspeakers. Most of the mega cities of India are amongst the noisiest cities of the world. Noise level in Kolkata's metro train carrying on an average 2 lakhs commuters was at 90.5 to 93.6.³ Bombay, Calcutta, Madras, Delhi and Nagpur are the noisiest cities of India. Noise levels of these cities are much higher than 45 dB as prescribed by the WHO.⁴ The noise levels by far are above the national ambient noise standard.⁵ By the international standards, a noise level up to 65 dB is considered tolerable.⁶

Noise pollution like other pollutants is also a by-product of industrialization, urbanizations and modern civilization. The noise pollution

² Jim and Phyllis MacNeill, "Towards a Quieter World Noise Pollution Control in the 1980's" as referred in Paras Diwan and Peyushi Diwan, *Environmental Administration Law and Justice*, at 402.

³ Annual Report", *Central Pollution Control Board*, 2002-2003, at 114.

⁴ Kids may become deaf in "Noisy Nagpur", *Hindustan Times New Delhi*, December 14, 1988.

⁵ The ambient noise standards for industrial area are 75 dB for day and 70 dB for night for commercial areas 65 and 55 dB for residential areas 55 and 45 dB and silence zone it is 50 and 40 dB during the day and night hours respectively. See Annual Report 1989-90 at 37.

⁶ *Bijaynanda Patra v. District Magistrate, Cuttack*, AIR 2000 Ori 70.

has two sources, i.e. industrial and non-industrial. The industrial source includes the noise from various industries and big machines working at a very high speed and high noise intensity. Non-industrial source of noise includes the noise created by transport/vehicular traffic and the neighbourhood noise generated by various noise pollution can also be divided in the categories, namely, natural and manmade. In the city, the main sources of traffic noise are the motors and exhaust system of autos, smaller trucks, buses, and motorcycles. Air craft's especially low flying military aircraft has added to the problem. The noise from locomotive engines, horns and whistles, and switching and shunting operation in rail yards can impact neighbouring communities and railroad workers. In industrial areas noisy manufacturing plants industrial workers and neighbours are affected.

III. Legislative Position

Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of the Supreme Court that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him.

It is an established fact that most of the causes of noise pollution are manmade. Law is regulator of the human conduct and thus through legislative measures we can regulate the human conduct to reduce the man made causes of noise pollution.

Chapter XIV of Indian Penal Code under sections 268 to 294A deals with offences relating to public health, safety, decency, morals etc. Noise pollution can be penalized with the help of section 268, 278, 290.

Criminal Procedural Code of 1973 does not have any direct provisions on noise pollution, but in Chapter X, Section 133 prescribes for the abatement of nuisance in ordinary cases and Chapter XI under Section 144 in urgent nuisance. Noise Pollution is also included in nuisance.

The Police Act 1861⁷ also deals with noise pollution and punishment thereof. This Act covers the problem of noise arising from music, which is one of the aspects of noise pollution. It authorises the superintendents of police to regulate the extent to which music may be used in streets on the occasions of festivals and ceremonies.⁸

It is surprising to note that railway engines and carriages are a big source of noise in India but railway locomotives enjoys a statutory protection

⁷ Act No. V of 1861 amended by Act No. IXIV of 1949.

⁸ Section 30(4) : dealing with the regulation of music in streets.

under the Indian Railway Act, 1890,⁹ against any action for the noise created thereby. There is no provision and no check to curb the noise pollution in the Act which provides for the regulation of noise by railway locomotives.

Originally, the Air (Prevention and Control of Pollution) Act, 1981¹⁰ was enacted exclusively for the control of air pollution, but by subsequent amendment, the problem of noise was also covered within the definition of air pollutants under Section 2(a) of the Act. In 1987 this Act was amended and the definition "air pollutant" was expanded to include noise. The amended Section 2(a) is as follow:

“air pollutant means any solid, liquid or gaseous substance [(including noise)]¹¹ present in the atmospheres in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment”.

Hence, the 1987 amendment to the Air Act now specifically extends the provision of Air Act including increased penalties, citizen's suits and the issuance of injunctions by Magistrates, to control noise pollution.

The Indian Parliament enacted the Environment (Protection) Act, 1986¹² (EPA) to prevent, control and abate environmental pollution which came into force on November 19, 1986. Section 2 of the Act has defined various terms including 'Environment', 'Environmental Pollutions' and 'Environmental Pollutants' comprehensively, but it does not specifically refer to noise. Only Section 6(2)(b) of the Act mentions the word noise and provides that the Government may make rules for allowable limits of environmental pollutants including noise for different areas.

Under Section 3 of the Act Central Government under empowered to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and controlling and abating environmental pollution. For this purpose, the Central Government may be notification under Section 6(2)(a)(b)¹³ of the Act make Rules to regulate environmental pollution. These Rules may include the standards of quality of air, water and the maximum allowable limits of the concentration of various environmental pollutants (including noise) for different areas.

Noise Pollution (Regulation and Control) Rules, 2000 was framed by the Central Government under Sections 3(2)(ii), 6(1)(2) and 25 of the

⁹ Act No. IX of 1890.

¹⁰ Act No. 14 of 1981

¹¹ Ins. by Act 47 of 1987, Sec. 2 (w.e.f. 1-4-1988).

¹² Act No. 29 of 1986

¹³ *Id.*, dealing with the power of the Central Government to make rules to regulate environmental pollution (including noise).

Environment Act, 1986 read with Rule 5 of the Environment Rules, 1986. This Noise Rules, 2000 came into force on February 14, 2000. It regulates the level of noise pollution in urban areas, including metropolitan cities from various sources. This also includes ban on use of loudspeakers without written permission and also generator sets.

Rule 3 provides ambient air quality standards in respect of noise for different areas/zones:

- (i) The State Government shall take measures for different areas/zones shall be such as specified in the Schedule annexed to these Rules.
- (ii) The State Government [shall categorize]¹⁴ the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- (iii) The State Government shall take measures for abatement of noise (including noise) emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under the Rules.
- (iv) An area comprising not less than 100 metres around hospitals, educational institutions and Courts may be declared as silence area/zone for the purpose of these Rules.

Rule 4 deals with responsibility of authorities to enforcement of noise pollution control measures:

- (i) The noise levels in area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.
- (ii) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

Rule 5 deals with restrictions on the use of loudspeaker public address system:

- (i) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.
- (ii) A loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises or communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

¹⁴ Subs. for "may categorize" by S.O. 1046 (E), dt. 22.11.2000 (w.e.f. 24.11.2000)

The State Government may, subject to such terms and conditions as are necessary to reduce noise pollution permit use of loudspeaker or public address system during right hours (between 10.00 p.m. to 12 : 00 midnight) on or during cultural or religious festive occasions of a limited duration not exceeding fifteen days in all during a calendar year.¹⁵

Rule 6: Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act -

- (i) whoever, plays any music or uses any sound amplifiers,
- (ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument¹⁶, or
- (iii) whoever, exhibits any mimetic, musical or other performances of a nature to attract crowds.

Rule 7 complaints to be made to the authority:

- (1) A person may, if the noise level exceeds the ambient noise standard by 10 dB (A) or more given in the corresponding columns against any area/zone, make a complaint to the authority.
- (2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these Rules and any other law in force.

Rule 8 powers to prohibit etc. continuance of music sound or noise:

- (1) If the authority is satisfied from the report of an officer in charge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating :
 - (a) the incidence or continuance in or upon any premises of - (i) any vocal or instrumental music, (ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or reproducing sound or; (b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

¹⁵ As amended by G.O. published in the Gaz. of India dated Oct. 11, 2002.

¹⁶ Quoted in *Savia and Associates v. National Capital Territory of Delhi*, AIR 2003 Del. 73.

(2) The authority empowered under sub-rule (1) any, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order.

Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

IV. Role of the Judiciary

In absence of any specific law¹⁷, the Courts in India have taken either the assistance of municipal committee rules, police rules or treat the excessive noise as public nuisance or private nuisance depending upon the facts of each case. Due to least litigation in the field of torts, there are only few judicial trends in this field.

In *Rajnikant v. State of Uttar Pradesh*,¹⁸ the petitioner challenged the bye-laws of Municipal Board of Allahabad, under which permission from the executive officer was necessary before using the loudspeaker. The contention was before the Court that it was infringed the right to freedom of speech and expression. Dismissing the petition, the Court expressed the views as follows:

"Use of mechanical instrument like loudspeaker and amplifier is not covered by the guarantee of the freedom of speech and expression under Article 19(1)(a)".¹⁹

In *Dhannalal v. Chhittar Singh Mehtap Singh*,²⁰ the defendant was running flour mill in the vicinity of the plaintiff's house and no attention was paid to implement the mechanical device to control noise pollution or high wall was created to control or reduce noise pollution. The Court granted injunction from running flour mill rejecting the contention that the license to such the mill had already been granted by the Municipal Committee on the ground that it was not an effective dependence because municipal committee had no power to confer rights upon anyone to interfere in the use or enjoyment one's land and to disturb his physical comfort. The Court summarize following principles:

¹⁷ The Air Pollution Act, 1981 as amended in 1987, however, covers Noise' as 'air pollutant' in the definition of 'air pollutants' under the Act.

¹⁸ AIR 1958 All 368

¹⁹ *Id.*, at 368.

²⁰ AIR 1959 MP 240

- (1) Constant noise, abnormal or unusual, can be an actionable nuisance, if it interferes with one's physical comforts.
- (2) The test of a nuisance causing personal discomfort is the actual local standard of comfort and not an ideal or absolute standard.
- (3) Generally, unusual or abnormal noise on defendant's premises which disturbs sleep of the occupants of the plaintiff's house during nights or which is so loud during day time that due to it, one cannot hear ordinary conversation in the plaintiff's house, or which cannot allow the occupants of the plaintiff's house to carry on their ordinary work is deemed to be a noise which interferes with one's physical comfort.
- (4) Even in a noisy locality, if there is substantial addition to the noise by introduction of some machine, instrument or performance at defendant's premises, which materially affects the physical comforts of the occupants of the plaintiff's house, then also the noise will amount to actionable nuisance.

In *Masud Alam v. Commissioner of Police*,²¹ the question before the Court was whether the use of loudspeaker which caused disturbance in the locality could be justified on the ground of the use being for a religious purpose. The commissioner of police ordered to ban the use of the loudspeaker for calling Azan. The ban order was challenged as it was violative of the fundamental right to religion provide under Article 25 of the Constitution of India. It was decided that the use of the loudspeaker which caused disturbance in the area could not be justified on the ground that the same was in connection with a religious purpose. The Court quoted the observation of Chief Justice Chagla given in *State of Bombay v. Narasu Appa Mali*,²² where the constitutional validity of Bombay Prevention of Hindu Bigamous Marriage Act, 1946 was challenged on the ground of Articles 14, 15 and 25. It was alleged that the Act created discrimination with Hindus. The Court, while upholding the constitutional validity of the Act, expressed its view about the religious practice as follow:

"Now a sharp distinction must be drawn between religious faith and belief and religious practices. When the State protects the religious faith and belief in religious practices run counter to public order, morality or health, then the religious practices must give way before the good of the people of the State as a whole".²³

²¹ 1959 C.W.N. 293.

²² AIR 1952 Bom. 84.

²³ *Id.*, at 84.

In *Bedi Gurucharan Singh and others v. State of Haryana and others*,²⁴ the applicants were referred the permission to use the loudspeaker under the Punjab Instrument (Control of Noise) Act, 1956, which was challenged on the ground that it violated Articles 19 and 25 of the Constitution. The Court while expressing the opinion about the freedom of speech and expression and that of religion, observed as follows :

"The fundamental rights guaranteed under Articles 19(1)(a) and 25 of the Constitution are not unfettered and absolute. The right freely to propagate religion 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 breach of peace".²⁵

In *Yoginder Lal Sharma v. Municipal Corp., Simla and others*,²⁶ the Himachal Pradesh High Court while discussing the issues of uncomfot and agony of the people due to noise pollution created by the loudspeakers, laid down²⁷ :

"That though the conditions imposed on the use of loudspeakers are laudable indeed. They are mostly being observed in breach. We may also record that in our court room many times we have to stand the noise of the loudspeakers used by religious institution are bent on inserting the fear of God in the society by using the loudspeakers in such a way that these can be heard over the maximum people of the town. It seems that in their zeal the religious institutions are following the principle of home delivery service."²⁸

Lashing out at the administrative functionaries including the District Magistrate and police of the area, the High Court further ordered²⁹ that despite clear provisions of law, unfortunately, the loudspeakers are being misused. Obviously, the authorities concerned fail to enforce the law. The offences being cognizable, the police is required to take cognizance of the same, the moment offence is being committed within their presence.

²⁴ 1975 Cr.L.J. 917 (P&H)

²⁵ *Id.* at 918

²⁶ (1983) (II) MCC, 133

²⁷ Mohan I, *Environmental Pollution and Management*, (1989) at 229

²⁸ *Id.* at 229-30

²⁹ *Ibid.*

In *Om Birargana Religious Society v. The State of West Bengal*,³⁰ the Court was of the view that indiscriminate use of loudspeaker/microphone cause serious threat to public life and violates the freedom of the people like the right to speak, right to read, right to know, right to sleep and rest. Therefore granting permission to use loudspeaker/microphone without any restriction would make the people captive listeners.

Keeping in the view the aforesaid circumstances, the Court said that the permission of using loudspeaker and microphone should necessary be restricted to protect the right of the citizen under Article 19(1)(a) of the Constitution. But public order and public health have been ground as refusal to use loudspeaker as a means of expression.

The Supreme Court of India in *M.C. Mehta v. Union of India*,³¹ showed its deep concern about environment protection and reiterated that every citizen has a right to fresh air and to live in pollution free environment. In this case, the petitioner - an environmentalist - filed a PIL under Article 32 of the Indian Constitution, seeking a direction against the Haryana Pollution Control Board to control air and noise pollution caused by stone crushers, pulverises and mine operators in Faridabad - within a radius of five kilometres from the tourist resorts of Badkal Lake and Surajkund. It was found that noise levels were in the range of 52-82 decibels and the noise level at a distance of 500 meters from the working mine was found at 40-42dB(A). During blasting at a distance of 500 meters and when 820 gms of explosives were used was 59.5 dB(A). This all was having an adverse impact on the local ecology. Besides rock blasting, the movements of heavy vehicles and operation of mining equipment and machinery caused considerable pollution in the form of noise and vibrations.

The Court found that the mining operations in Badkal Lake and Surajkund area were causing air pollution and noise pollution (as per report of NEERI).

The Court held that to preserve environment and control pollution within the vicinity of the two tourist resorts, it was necessary to stop mining in the area. Further, the Court directed to develop a green belt of 200 metres at 1 k.m. radius all around the boundary of the two lakes and to leave another 800 metres as a cushion to absorb the air and noise pollution. Further, trees

³⁰ C.O.N. 4303(W) of 1995- Hon'ble Justice Bhagavati Prasad Banerjee directed the authorities (DM, SDM etc) not to allow the operation of loudspeaker in street between 9 p.m. till 7 in the following morning for any purpose including entertainment, trade of business but its use by police, ambulance, fire-bridged or by local authorities, while making announcement for public, was exempted but subject to such level of volume as specified by West Bengal Pollution Board.

³¹ AIR 1996 SC 1977; (1996) 8 SCC 462

should be planted on both sides of the roads leading to the mines and lakes to minimise the noise pollution.

The Haryana Pollution Control Board also declared this tourist area as a sensitive area, as the Ambient Air Quality Standards are more stringent in sensitive areas than other area.

This way, it was a measure as envisaged by Section 3 of the Environment (Protection) Act, 1986 to maintain the quality of the environment and to control, prevent and abate the noise pollution.

Thus, while issuing these orders and directions the Court was fully conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the resident of the area.

To controlling the noise pollution through legislation as well as judicial decisions, the Supreme Court made a very significant, landmark and monumental judgment, by accepting the special leave petition, in the case of *In Re : Noise Pollution*.³²

In this case, an Engineer by profession filed a writ petition before the Supreme Court. The immediate provocation for filling the petition was that a 13 year old girl was a victim of rape reported in newspaper on January 3, 1998. Her cries for help sunk and went unheard due to blaring noise of music over loudspeaker in the neighbourhood. The victim girl, later in the evening set herself ablaze and died of 100% burn injuries. The petitioner complained that noise caused by high tone of loudspeakers in the surroundings such as religious and commercial places was one of the major factors for not hearing her cries at the time of rape. This consequence proved to be helpful for rapist to perform their act.

The Government of India framed and published Noise Pollution (Control and Regulation) Rules, 2000. On October 11, 2002 the Government of India brought in an amendment in the Rules. The amendment empowered the State Government to permit use of loudspeaker or public address system during night hours (between 10 p.m. and 12 p.m. mid-night) on or during the cultural or religious occasions for a limited period not exceeding 15 days. Vires of this amendment were put in issue by the appellant submitting that the provisions is not accompanied by any guidelines and is capable of being misused to such an extent that the whole purpose behind enacting the Rules itself may be defeated. The High Court of Kerala found the petition devoid

³² 2005 (5) Scale 475.

of any merit and directed the petition to be dismissed. Feeling aggrieved, this petition has been filed by special leave.

The special leave petition and, in particular, the writ petition raises issues of wide ranging dimensions relating to noise pollution and the implications thereof. Taking cognizance of the matters as public interest litigation, the Court vide its order dated April 4, 1998, directed the cause title of the petition filed by Shri Anil Kumar Mittal to be amended as "In Re : Noise Pollution - Implementation of the Laws for Restricting Voice of Loudspeakers and High Volume Producing Sound System".

In a joint hearing of a reference petition and an appeal regarding noise pollution vis-a-vis right to life enshrined in Article 21 of the Constitution, two Judges Bench comprising Chief Justice R.C. Lahoti and Justice Ashok Bhan issued directions on July 18, 2005 to control noise pollution from firecrackers, loudspeakers and vehicular noise. The Court found that the amendment to Noise Pollution (Regulation and Control) Rules, 2000 is not accompanied by any guidelines and is hence capable of being misused which may defeat the very purpose of the Rule itself.

The Apex Court made a very significant observation regarding Article 21 of the Constitution. The Court observed as follows :

"Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. None can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others".³³

The Court further held that:

"Certain issues of far-reaching implications in day-to-day life of the people in India relatable to noise pollution vis-a-vis right to life enshrined in Article 21 of the Constitution as interpreted in its wide sweep by the constitutional courts of

³³ *Id*, at 483.

the country. Though a limited grievance was raised to begin with but several intervenors and interlocutory applications enhanced the scope of hearing and the cases were heard in a very wide perspective centering around Article 21 of the Constitution. Several associated and incidental issues have also been gone into."³⁴

Indian judicial opinion has been uniform in recognizing right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution and noise pollution beyond permissible limits as an in-road on that right.³⁵

The Court observed that:

"Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge into aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution free life guaranteed by Article 21. Article 19(1)A cannot be pressed into service for defeating the fundamental right guaranteed by Article 21."³⁶

The Apex Court by restricting the time of bursting the firecrackers has not in any way violated the religious rights of any persons as enshrined under Article 25 of the Constitution. The festival of Diwali is mainly associated with pooja performed on the auspicious day and not with firecrackers. In no religious text book it is written that Diwali has to be celebrated by bursting crackers. Diwali is considered as a festival of lights and of noises. Shelter in the name of religion cannot be sought for, bursting firecrackers and that too at odd hours.³⁷

³⁴ *Id.*, at 481.

³⁵ *Id.*, at 499.

³⁶ *Id.*, at 483.

³⁷ *Id.*, at 508

The Court suggested that there was an equal need of developing mechanism and infrastructure for enforcement of the prevalent laws. Those who were entrusted with the task of enforcing laws directed towards controlling noise pollution must be so trained as to acquire expertise in the matter of fighting against noise pollution by taking preventing and deterrent measures both. They need to be equipped with the requisite equipments such as audio meters as would help them in detecting the level of noise pollution more so when it crosses the permissible limits and the source thereof.³⁸

The Court concluded its observation by saying that:

"Legislature and the Executive in India are completely unmindful of the menace of noise pollution. Laws have been enacted and the Rules have been framed by the Executive for carrying on the purposes of the legislation. The real issue is with the implementation of the laws. What is needed is the will to implement the laws".³⁹

The Apex Court issued detailed guidelines⁴⁰ which are as under:

- (i) There shall be a complete ban on bursting sound emitting firecrackers between 10 p.m. and 6 a.m. It is not necessary to impose restrictions as to time on bursting of colour/light emitting firecrackers.
- (ii) The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise sound is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75dB (A) whichever is lower.
- (iii) 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 10.00 p.m. to 6 a.m.) except in public emergencies.
- (iv) The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB (A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place.
- (v) 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.
- (vi) The States shall make provision for seizure and confiscation of loudspeakers, amplifiers and such other equipments as are found to be creating noise beyond the permissible limits.

³⁸ *Id.*, at 510.

³⁹ *Id.*, at 494.

⁴⁰ *Id.*, at 511

- (vii) There is a need for creating general awareness towards the hazardous effects of noise pollution.
- (viii) The Central Government/State Government shall take steps for laying down such standards and notifying the authorities where it has not already been done.⁴¹

V. Conclusion

The analysis of foregoing provisions and cases reveals that despite the wide directions issued by the Supreme Court in the historic decision in the case of *In re: Noise Pollution*,⁴² there is no deterrent effect to control of noise pollution.

The present rules of law can support the victims of noise pollution, provided the Courts, interpret the rules liberally in favour of the claimants in the light of the changing circumstances. Noise pollution as such has not been considered to be a wrongful act so far. The Courts may now have no difficulty in treating noise pollution as such, as a breach of legal duty actionable under the law in view of the fundamental duty of the every citizen to protect and improve the natural environment, enshrined in Article 51A(g) of the Constitution.⁴³

From the various decisions discussed above, it is apparent that from the point of view of victims of noise pollution the remedy through an action for nuisance, does not provide sufficient protection. In case of nuisance the emphasis is sometimes on technical considerations rather than the interest invaded.

Indian Courts in the absence of any existing rule to assess the actual damages under the law of torts always prefer perpetual injunctions instead of awarding damages in cases of the noise.⁴⁴

Thus the realistic approach of Indian Courts regarding the cases of the noise is still awaited. Once British practice of awarding damages is adopted by the Courts in India regarding the cases of noise, it would undoubtedly prove more effective in controlling the growing problem of noise pollution in the present set up of our social system.

⁴¹ Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000, provides to make provision for specifying ambient air quality standards in respect of noise.

⁴² 2005 (5) Scale 475.

⁴³ Art. 51A(g) reads as under : "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

⁴⁴ AIR 1959 M.P. 240-41

No doubt the judiciary in India has done a great service by declaring the right to pollution free air and noise free environment as fundamental right, but the question remains to be determined is how to find out the level of noise which would infringe the fundamental right of the persons. Can the Court by any method control the "quality of the environment" and ensure to citizens safe environment"? These are the questions of great complexities which cannot be solved by the judiciary alone. In this regard, the co-operative efforts by the administrative wing of the State and realisation of the duties of the citizens regarding the noise free environment.