



RIGHT TO BE FREE FROM NOISE POLLUTION IN INDIA: LEGAL PROVISIONS AND JUDICIAL INTERPRETATIONS

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Abstract

Noise is an unwanted product and a type of atmospheric pollution. It has a serious effect on human health but not received the exact degree of legal concern as devoted to other kind of pollution like, air, water etc. Though several provisions are available on the issue of noise pollution in India but these are in scattered form viz. in the law of torts, Air Act etc. Our Judiciary has also given less attention on noise pollution. No separate mechanism is there to monitor and control the problem of noise pollution. Therefore, there is urgent requirement to give required degree of legal concern to this form of pollution to maintain a decent quality of human life. In view of the above, this paper tries to outline the role of existing laws and the perception of judiciary and its efforts in context to right to be free from noise in India. To achieve enshrined objectives in this paper, the analytical approach on the laws and judicial interpretation has been applied.

Keywords: *Judicial Interpretation, Legal Mechanism, Noise Pollution, Rights to live,*



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Introduction

Over the last sixty years India's rapid industrialization, urbanization and development in different ways have been major reason for the country's severe environmental degradation. During the initial period of independence, India has started its national planning process with the formulation of First Five Year Plan. The first three five year plans laid thrust on the promotion of industry, agriculture, community development, transport and communication, development of the public sector and rapid industrialization. Environment protection did not receive any significant recognition during this period. But the fourth and fifth five year plans during seventies mark the beginning for preserving the quality of life and promoting the environment protection. During eighties, in sixth and seventh five year plans, the period of new development has been marked in the history of environmental policy making in India. During this period the concern of environment protection was turned into concrete actions by launching programs for enhancing the quality of life and further strengthen the institutional

and legal mechanism.¹ In 1980 the Tiwari committee was constituted to have an introspection of the regulatory mechanism with a view to further strengthen the regulating system. The committee suggested for several measures like Biosphere reserves, protection of grazing lands etc. and importantly suggestion on prevention of noise pollution. The committee has suggested that a comprehensive legislation is required to cover the outdated bits and pieces of related unimplemented legislation at present on the statute books. Therefore, noise pollution has received attention first time to manage along with environmental pollution.²

Meaning and the Concept

The word “Noise” is derived from Latin term “nausea” and remarks or actions intended to convey a specific impression or to attract attention.³ Noise has been defined as unwanted sound, a potential hazard to health and communication dumped into the environment with regard to the adverse effect it may have on unwilling ears.⁴ It is a type of atmospheric pollution and high level of it can become health hazard and may cause deafness, physiological ill effect, imbalance to the human or animal life and various other health problems. Noise pollution has become one of the major problem of the present time and it is considered as the environmental pollution caused by excess level of noise through many sources.

Causes and Effects of Noise Pollution

In general, there are natural causes and man-made causes of noise pollution. Natural causes includes air noise, volcanoes, seas, rivers, waterfall, thundering sound. Man-made reasons includes the lightning in the sky, exchange of words, industries, means of transport, medium of entertainment, construction works, fireworks etc.

Noise pollution may be responsible for various hearing problems (damage to ear drums and loss of hearing). It may reduce ear sensitivity to the sounds required to regulate body rhythm and affects the psychological health and causes the occurrence of aggressive behavior, sleep disturbance, stress, weakness, fatigue, hypertension, cardio-vascular diseases including other severe and chronic health issues in later life. And noise pollution may affects wildlife, animal and the whole environment.

Noise Pollution: Statutory Provisions in India

General Provisions

¹ Kailash Thakur. *Environmental Protection Law and Policy in India*, 122. Deepa & Deep Publication Pvt. Ltd., New Delhi 2013.

² Id. at 137.

³ Noise, available at <http://www.thefreedictionary.com/noises>, accessed on 21 Oct. 2016.

⁴ B. R. Jinal. K. L. Toky and P. S. Jaswal, *Environmental Law Studies*, 160 (1998). See also P.S. Jaswal, Nishta Jaswal and Vibhuti Jaswal, *Environmental Law*, 413-414. Allahabad Law Agency, Faridabad, 2015.

Section 2 (b) of the Environment (Protection) Act, 1986 defines “environmental pollutant” as any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.⁵ Section 6 (2) (b) of the Environment (Protection) Act, 1986 recognizes noise as an “environmental pollutant” as the maximum allowable limits of concentration of various environmental pollutant (including noise) for different areas. Section 6 of the Environment (Protection) Act, 1986 empowers Central Government to make rules under section 3 to take measures to protect and improve environment.⁶

Section 2 (a) of the Air (Prevention and Control of Pollution) Act, 1981 includes noise in the definition of ‘air pollutant’ as any solid, liquid or gaseous substances (including noise)⁷ present in the atmosphere such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.⁸

Thus the Environment Protection Act and the Air Act are having provisions on noise pollution and the presence of noise in the environment is environmental pollution in terms of section 2 (c)⁹ and also the presence of noise in the atmosphere is air pollution in terms of section 2 (a)¹⁰.

Law of Torts and Noise Pollution

Under the law of Tort noise pollution is considered as a civil wrong if noise affects person’s comforts. It would amount to nuisance, which is actionable and appropriate relief for the victim is available either in the form of damages or by way of injunction. In *Gotham Construction Co. v. Amulya Krishna Ghose*¹¹ the court observed that no money could afford adequate relief to the plaintiff and his neighbour who are thereby discomforted and in determining whether such noise was actual discomfort, the Court is an expert of experts. The victim can claim injunction to stop nuisance.

The Orissa High Court in *Bijayananda Patra v. District Magistrate, Cuttack*¹² held that where noise can be said to amount of noise pollution and the person causing noise can be restrained by injunction, irrespective of the reason that noise is an outcome of conducting the business. The court in this case has rightly observed that the rights connected with freedom of speech and expression may be eased by interpreting the expression ‘decency’ in Article 19

⁵ Section 2 (b), the Environment (Protection) Act, 1986.

⁶ Id. Section 6 and section 3.

⁷ Inserted by Act 47 of 1987, section 2 (w.e.f. 1-4-1988)

⁸ Section 2 (a), the Air (Prevention and Control of Pollution) Act, 1981.

⁹ Section 2 (c), the Environment (Protection) Act, 1986.

¹⁰ Section 2 (b), the Air (Prevention and Control of Pollution) Act, 1981.

¹¹ AIR 1969 Cal. 91.

¹² AIR 2000 Ori. 70.

(2) on a future day to justify ban on noise by loudspeakers and there is no doubt that health is specific ground for prohibiting excessive noise.

In *Forum, Prevention of Envyn. & Sound Pollution v. Union of India*¹³ the court observed that 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. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbour or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time.

Criminal Law and Noise Pollution Control Measures

Section 268 of the India Penal Code, 1860 reads as “A person is guilty of public nuisance who does any act or is guilty of any illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right” and treats noise as a public nuisance.¹⁴ Further Section 290 of the Code by considering it as a public nuisance not provided in the Code, for which the punishment prescribed is fine extending to two hundred rupees.

Section 133 under the Criminal Procedure Code, 1973 is of great importance and empowers an Executive Magistrate to pass conditional order requiring the person causing nuisance including that of noise, to remove such nuisance. In *Krishna Gopal v. State of MP*¹⁵ Madhya Pradesh High Court has made use of Section 133 as a potent measure for the control of noise pollution and observed that the manufacturing of medicines in a residential locality with the

¹³ (2005) 5 SCC 733.

¹⁴ Section 268, the India Penal Code 1860.

¹⁵ 1984 Cr.LJ. 396,

aid of installation of a boiler resulting in the emission of smoke therefrom is undoubtedly injurious to health as well as the physical comfort of the community.

In *Madhavi v. Thilakan*¹⁶ the Kerala High Court adopted a positive approach to the problem of noise pollution by holding that running of workshop causing nuisance by air pollution and noise pollution in violation of the order passed under Section 133 of Criminal Procedure Code. The Court said that it cannot be justified on the ground that it provides livelihood to some persons and has regarded right to a safe air environment free from noise as more important than the right to livelihood.

Noise Pollution Control under other Central Legislations

The Police Act, 1861 under section 30, envisages that the District Superintendent or the Assistant District Superintendent of Police are authorized to direct the conduct of all assemblies and processions on public roads or in the public streets. Under this provision, the police authorities can prescribe the routes and timings for taking out processions and they can also require to issue a notice for the procurement of license in cases where convening of the assembly or procession is likely to cause a breach of peace. This provision also empowers Police officers to regulate music in the streets on the occasion of festivals and ceremonies and regulatory power under this section extends to stop, disperse or to declare the assemblies unlawful.

The Railway Act, 1890, which was repealed by the Railways Act, 1989, did not contain any specific provision for regulating noise caused by locomotives and also lets free from statutory control, probably for the reason that railways constitute the largest means of public transportation in India. However, shunting operations even now continue near residential areas causing a great deal of noise and annoyance to the general public.¹⁷

Under the provisions of the Air Craft Act, 1934, causing of willful damage or injury is actionable but there is no specific provision relating to control of noise pollution. However, this Act authorized Government to make rules for the protection of the public health and the Indian Aircrafts (Public Health) Rules, 1946 may be taken as reference here in this regard.

Section 70 of the Motor Vehicles Act, 1939¹⁸ is an important provision to control noise pollution as it empowers the State Government to make rules to reduce noise emission and prohibit carrying of appliances or the use of trailer with motor vehicles, causing annoyance or danger and also the periodical testing and inspection of vehicles by authorities. The motor

¹⁶ 1988 (2) K.L.T. 730.

¹⁷ The Railways Act, 1890, Section 16 gives statutory authority for the use of locomotives to the railway administration.

¹⁸ The Motor Vehicle Act, 1939 was repealed by the Motor Vehicle Act, 1988.

Vehicle Act, 1988 has also envisages the penalty for the violation of noise pollution standards.¹⁹

The Factories Act, 1948 in its third Schedule under Sections 89 and 90, contains a list of noticeable disease including the diseases of hearing loss caused by noise. High intensities, high frequencies and intermittency of noise often cause annoyance to the industrial workers. However, this Act do not envisage measures to meet the above situation, except that it makes it obligatory on the part of occupier of every factory to keep the factory clean and free from any drain, privy or other nuisance.²⁰ The expression ‘nuisance’ in Section 11 says that expression ‘nuisance’ can be considered to include noise. Model Rules framed under the Factories Act, 1948 prescribes the noise limits for work zone area.

The Air (Prevention and Control of Pollution) Act, 1981 did not contain any provision for noise pollution control but in 1987 this Act was amended and the definition of “air pollutant” was expanded to include noise.²¹ Resultantly, the amendment, noise pollution is now covered under the air pollution and the provisions of the Act on increased penalties, citizens’ suit and the issuance of injunction by Magistrates can be invoked to control noise pollution. Sections 16 and 17 powers the Central and State Boards to exercise powers and functions for preventing and controlling noise pollution and can also lay down noise standards.

The Environment (Protection) Act, 1986 was enacted to prevent, control and abate environmental pollution. This Act defines various terms but does not makes specific reference to noise as an ‘environmental pollutant’. However, Section 6(2) (b) empowers the Central Government to make rules to regulate environmental pollution including noise and section 3 to take measures to protect and improve the quality of environmental and preventing, controlling and abating environmental pollution. Therefore, it seems that this Act takes a comprehensive view of environment in its totality and therefore, noise pollution cannot be viewed in isolation or apart from it. The central Government enacted the Environment (Protection) Rules, 1986, which provides for the maximum allowable limits to various environmental pollutant including noise.

¹⁹ Section 190 (2), any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the standards prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

²⁰ Section 11 of the Factories Act, 1948.

²¹ ‘Air Pollutant’ to mean any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

The Noise Pollution (Regulation and Control) Rules, 2000 was framed by the Central Government, in exercise of the powers under the provision of the Environment (Protection) Act, 1986 and these rules came into force on 14th July, 2000. These rules were amended by the Noise Pollution (Regulation and Control) (Amendment) Rules 2000 w.e.f. 24th November 2000. The Rules provide for ambient air quality standards in respect of noise for industrial area, commercial area, residential area and silence zone both during day time and night time.²² The State Government is also empowered to categories areas to take measures for abatement of noise and these rules also mandate all the development authorities and local authorities to take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and achieve the objective of maintaining the ambient air quality standards in respect of noise.²³ Rule 4, under the same regulations make responsible authorities to enforce noise pollution control measures and rule 5 impose restrictions on the use of loudspeakers or public address system but with certain relaxations.²⁴ Rule 6 impose a penalty for the activities in violation to rules on a silence zone. Rule 7, is about the exceeds of the noise from the ambient noise standards prescribed in respect of an area, any person can make a complaint to the competent authority which can proceed against the violator by taking appropriate action and on failure, the aggrieved party can approach the court after expiry of 60 days and the court can take prosecution steps. Rule 8, empowers the authority to prohibit the continuance of music, sound or noise becoming annoyance, disturbance, discomfort or injury to the public. The Noise Pollution (Regulation and Control) Rules, 2000 also prescribe for air quality standards in respect of noise with regard to domestic appliances, firecrackers and noise limits for industries, automobiles, generator sets, etc. Thus, the regulation of noise pollution are exhaustive, but system for monitoring is not available in the said provisions. It is also need to be mentioned here that the provisions are not the having any specific agency for the prevention and control the noise pollution cases. Therefore, in case of fundamental rights mere declaration is not sufficient to solve the purpose as per specific nature of the fundamental rights.

Constitution of India

The Constitution of India obligates ‘State’ under the fundamental rights and ‘Citizens’ under (Article 51-A (g)) fundamental duties²⁵ to protect and improve the environment. Article 48-

²² Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000.

²³ Rule 3 (4) of the Noise Pollution (Regulation and Control) Rules, 2000.

²⁴ As Amended by Gazette Notification dated 11 October, 2002.

²⁵ The Constitution (Forty-second Amendment) Act, 1976.

A²⁶, added a new directive principle in dealing specifically with protection and improvement of environment. Expanding horizons of Article 21 under the right to life and personal liberty as settled by repeated pronouncements of the Supreme Court that right to life is not of mere survival or existence, it guarantees life with human dignity and if anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him.

Noise Pollution: Judicial Interpretations

In India, our Supreme Judiciary has interpreted the existing constitutional provision expended the meaning right to life as to live with human dignity first and to live in healthy environment later. The Supreme Court through its various decisions has upheld that the word 'environment' has a broad spectrum and within its ambit fall 'hygienic atmosphere and ecological balance'. In *Subhash Kumar v. State of Bihar*,²⁷ the Supreme Court observed that right to life is a fundamental right under Article 21 and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution of removing the pollution of water or air, which may be detrimental to the quality of life.

In *P. A. Jacob v. Superintendent of Police, Kottayam*,²⁸ it was observed that compulsory exposure of unwilling persons to dangerous and disastrous level of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Article 21.

In the case of *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and others*,²⁹ the Apex Court expressed that "In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization and is having many evil effects including danger to the health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance etc. This also effects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours." The Supreme Court dealt with the problem of the noise pollution vis-à-vis freedom of religion under Articles 25 and 26 of the

²⁶ Ibid.

²⁷ (1991) 1 SCC 598.

²⁸ AIR 1993 Ker. 1.

²⁹ AIR 2000 SC 2773.

Constitution. The court noted that every fundamental right should coexist in harmony with the exercise of another fundamental right and there is no ground for permitting noise pollution caused by voice amplifiers, loudspeakers or musical instruments.

In *Free Legal Aid Cell v. Government of NCT of Delhi*³⁰ the court observed that the effect of noise on health is a matter which has yet not received full attention of our judiciary and pollution being wrongful contamination of the environment, causes material injury to the right of an individual. Noise can well be regarded as a pollutant because it contaminates environment, cause nuisance and affects the health of a person and would, therefore, offend Article 21, if it exceeds a reasonable limit. This PIL was filed against the adverse effects of display of fireworks and use of high-sounding explosive fireworks on the health of adults and children.

In *Sayeed Masood Ali v. State of Madhya Pradesh*,³¹ the Madhya Pradesh High Court observed on a writ petition filed by a cardiac patient against noise pollution caused by loudspeaker in Dharamshala run by the respondent, that "life is a glorious gift from God. It is the perfection of nature, a masterpiece of creation. It is majestic and sublime. Human being is the epitome of the infinite prowess of the divine designer. Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. It has been said "life is action, the use of one's powers" and powers one can use if he has real faith in life. The term 'life' as employed under Article 21 of the Constitution of India does never mean a basic animal existence but conveys living of life with utmost nobleness and human dignity - dignity which is an ideal worth fighting for and worth dying for. Life takes within its fold "some of the finer graces of human civilization which makes life worth living"

In *Farhd K. Wadia v. Union of India*³² the Supreme Court held that interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being 'necessity of silence', 'necessity of sleep', 'rest', which are biological necessities and essential for health. Silence is considered to be golden and it is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost.

Conclusion

Legal and administrative framework pertaining to noise pollution in India seems inadequate and also ineffective in itself to serve the purpose. Implementing mechanism is common and

³⁰ AIR 2001 Del. 455.

³¹ AIR 2001 MP 220.

³² AIR 2009 SC (Supp.) 174.

based on complaint mechanism and sometimes creates problems for the victims also. Comprehensive national legislation on noise control and abatement is required with the pace of development with the support of modern technology and self-governing monitoring system. With the use of technology and to remove the drawback in implementation of noise control measures, it may be hoped that such legislation will be more effective. Along with the statutory and administrative measures, there is also need to create general awareness towards the hazardous effects of noise pollution with the help of educational institutions, social workers, NGOs, medium of communication, social networking etc.

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