

## Constitutional Provisions Related To Noise Pollution

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**Abstract:** Pollution has been the expected curse that the human civilization is facing due to own acts. With the larger emphasis on materialistic structures of advancement, attention has been made on the unquestionable rationality of “urbanization”. With the progression of science and technology at an exceptional speed, the urban epicentres of today’s world have developed not just in dimension but also in terms of the living conditions given to them. This has conveyed a grow in novel responsiveness amongst the individuals about the noise pollution, which has turn out to be a part of our everyday lives.

This paper categorizes the number of constitutional provisions available in India to check this menace. Thus an effort has been made to give some probable suggestions to curb the noise pollution and to make this paper useful for researchers, planners, administrators and people concerned with the enactment and enforcement of law.

**Key Words:** Noise pollution, constitutional provisions, environmental legislation, pollution-related laws.

### 1. INTRODUCTION:

Environmental pollution is a serious menace all over the world. Industrialisations as well as urbanisation have driven to be an exceptional growth of environmental threats.

Environmental remorseful has been weakened considerably for the reason that of damage to the vegetation cover also biological diversity. In other sense, we can point out that there is a rigorous disparity in the environment. Environmental pollutants have increased which means the unnecessary occurrence of solid, gaseous, liquid and noise in the atmosphere in such amount which may be harmful to living and non-living things. Noise is also taken to be pollutants in addition to with its consider able injurious effects not only on human beings but also on animals, birds and non-living things. Difficulties because of noise pollution are increasing day-by-day specifically in the urban and industrial regions. Airports, Highways, Industries and construction sites are places where considerably high noise pollution exists.

Noise is not a contemporary issue because it has a long history. Noise is a kind of atmospheric pollution in the form of waves. It is a shadowy public foe. It has amplified in the recent era of industrialisation and technological development. The encyclopaedia Britannica defines noise as “any undesired sound.” According to this definition, “a sound of church bells may be music to some and noise to others. Usually noise is a mixture of many tones combined in a non-musical manner.”The American jurisprudence

analysis noise as an unwanted sound that produces unwanted effects, sound without value and sources are aircraft and airports, vehicular traffic, railways, industrial activities.

Noise pollution did not produce much public apprehension due to unawareness about the severe consequence of noise on both workers in industry particularly and the public in the community generally. Noise is an important environmental pollutant like noxious gases that befoul our air, water and soil. It destroys bridges and produces cracks in buildings. The noise can cause skin and mental diseases. It has been revealed that noise is a technology created problem and that the overall noise doubts every ten years keeping pace with our social and industrial progress. According to Robert Koch a Nobel prize winner German bacteriologist "A day will come man will have to fight merciless noise as the worst enemy of health."<sup>1</sup> The problem of noise pollution has already crossed the danger point and noise like smog, is threatening as a slow agent of death.<sup>2</sup> It is hard to find, even in rural areas, any place where the only sound are those produced by nature.<sup>3</sup>

In considering our acoustic environment, we must discriminate between these two expressions, i.e., noise and sound. It has only when the outcomes of a sound are unwanted, it may be termed as a noise. Sometimes it has an amenable musical quality. It is an enjoyable to a group of people or individual or objectionable to another individual or group of people or a sick person. Physically, sound is a mechanical disruption transmitted as a wave motion in the

air and other elastic or mechanical means such as water or steel.

The human ear is very sensitive to sound waves of the frequency of 20 Hertz Hz) to 2000Hz pitch, but not all sounds are detectable by the human ear. There are two types of sound:

- ultra sound, and intra sound.
- Ultra Sound is that sound in which the frequency limit goes beyond roughly 15 kHz. It is beyond the upper limit of normal hearing, i.e., it has a frequency too high to stimulate the sense of hearing.
- Intra Sound is the sound in which sound is lower than a frequency of about 16Hz. It is below the lower limit of normal hearing. It is commonly stated to as vibration.

Noise Pollution can be classified into two classes:

- Industrial sources- the industrial sources may consist of noise from several industries functioning in towns like boiler, machinery, foundry, cutting machines, etc. noise is a by-product of energy preservation and every single industry creates noise. Pollution due to big machineries operational at a high velocity has high noise intensity.
- Non-industrial sources.-Non-industrial sources of noise can further be distributed into the following :Loudspeaker, trains, aircraft, construction work, crowded bazaars, social religious, political gatherings

<sup>1</sup>Vijayalakshmi, Dr (Miss) K.S. Noise Pollution in Martin J. Bunch, V. Madha Suresh and T. Vasantha Kumaran, Eds., Proceeding of the Third International Conference on Environment and Health, Chennai, India, 15-12-2003 to 17-12-2003. Chennai: Department of Geography, University of Madras pp. 597-603

<sup>2</sup>Bijayananda Patra v. District Magistrate, Cuttack, 1999 SCC OnLine Ori 65 : AIR 2000 Ori 70.

<sup>3</sup>Quoted in Gurdip Singh Environmental Law in India p.198.

including sports field, sirens and generator sets.

## 2. INDIAN CONSTITUTION AND NOISE POLLUTION CONTROL:

Previously, our Indian Constitution did not have any provision related to that of noise pollution. But by the 42nd Amendment Act of 1976, Article 48-A and Article 51-A was inserted which gave the provision to combat noise pollution as a part of environmental concern. As a consequence, India turned out to be one of rare countries which undertook the ability to safeguard and improve the condition of the environment. Our Constitution, by the means of Fundamental Duties under Part IV A, imposes a duty on every citizen to support in protecting our environment.

As a result, India became one of the few countries of the world which had provisions in its Constitution as an obligation for the environmental protection and improvement. It has interposed a different type of dimension to public accountability by compelling the Central Government to safeguard and develop the environment for the betterment of the society as a whole. So the Constitution makes a twofold provision by way of directives to the state for the protection and improvement of the environment as well as imposing a sense of duty on every citizen to aid in the preservation of the natural environment.

A problem came up before the Supreme Court in the case of State of Rajasthan v. G. Chawla<sup>4</sup> that can State Legislature regulate loud noise and make it punishable? The Supreme court said that as this right is not absolute, State "has the right to control loud noises when the rights of

such users, in disregard to comfort and obligation to others, emerges as a manifest nuisance to them. The state can make laws in the exercise of its power under "Public Health and Sanitation".

Thus the state can control loud noises as well as music and it is in permissible limits of the Constitution. The Court has made it distinctive that persons are free to make noise but not at the price of abrogating other's rights. The moment it becomes a nuisance, it fails its constitutional freedom and it will also be violative of Article 51-A.

It has been witnessed by the Courts that Articles 25 and 26 are not absolute and are bound by definite limitations. Even the Ramleela and Akhanda Path cannot be permitted to create unnecessary noise which compels a man to listen in to undesirable noise. As the right to profess and propagate religion under article 25 also relates to health, the noise produced by loudspeakers can be examined in the interest of the health of the public welfare.

The Delhi High Court in case of Free Legal Aid Cell Shri Suman Chand Aggarwal v. Govt. (NCT of Delhi)<sup>5</sup> 2001 declared

*"...noise can well be regarded as a pollutant because it contaminates the environment, causes nuisance and affects the health of a person and would, therefore, offend the right to life, of Article 21, if it exceeds reasonable limits. it was also observed by the Court that the effect of noise on health has not yet full attention of our judiciary..."*

In the case of Acharya Maharajshri Narendra Prasadji v. State of Gujarat<sup>6</sup>, it was held that:

<sup>5</sup> Free Legal Aid Cell Shri Suman Chand Aggarwal v. Govt. (NCT of Delhi) AIR 2001 Delhi 455,

<sup>6</sup> Acharya Maharajshri Narendra Prasadji v. State of Gujarat 2012 7 SCC 80

<sup>4</sup> State of Rajasthan v. G. Chawla 1959 AIR 544 1959 SCR

*“No right in an organised society can be absolute. Enjoyment of one’s rights must be consistent with the enjoyment of rights of others. .... one fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with the reasonable and valid exercise of powers by the State in the light of the Directive Principles in the interests of social welfare as a whole.”*

The Court has acknowledged that the drawing of the authorization to use loudspeakers did not amount to the abjuration of freedom of speech and expression. On the other hand, the operative use of loudspeakers amounts to an infringement of the right to life which consist of the right to clean, pollution-free environment as well as freedom from noise.

Personal liberty signifies a package of rights, necessary for the subsistence of human life. In *Maneka Gandhi v. Union of India*<sup>7</sup>, the Supreme Court pointed out that the expression “personal liberty” does not mean only liberty of the persons but also liberty or rights attached to the person (Jus-personam).

A division bench of the Delhi High Court observed in *Anand Vardhan Chandel v. Delhi University*<sup>8</sup> that the expression “life and personal liberty” includes a numerous of rights, which though not specified in Part-III of the Indian Constitution which can be incorporated in a number of phases of liberty on condition that they are essential for the full growth of human persona.

Further in *Francis Coralie v. Union Territory of Delhi*<sup>9</sup>, Justices PN Bhagwati, Fazal Ali, Murtaza, while stressing

the quality of life and its enjoyment within the purview of Article 21 have rightly said:

*“the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it.”*

Therefore, the expression “personal liberty” is not restricted to the protection of limb and faculty but comprises the whole thing essential for the enjoyment of life with all human dignity. A very significant question is that how far the infringement of liberties important for life created by the environmental pollution lies in the range of Article 21.

It has been discussed by the High Court of Andhra Pradesh in *T. Damodar Rao v. S. O. Municipal Corporations*<sup>10</sup>, Hyderabad. It observed:

*“The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed.”*

There can be no aim why practice of violent extinguishment of life alone should be regarded as infringement of Article 21 of the Constitution. The slow harming by the polluted atmosphere produced by environmental pollution as well as spoliation should also be observed as amounting to violation of Article 21 of the Constitution. Similar question has recently been discussed by Rajasthan High Court in *LK Koolwal v State of Rajasthan*<sup>11</sup>, while issuing the writ of mandamus against the municipal corporation of Jaipur, the Court observed:

<sup>7</sup> *Maneka Gandhi v. Union of India* [1973] 3 SCR 530

<sup>8</sup> *Anand Vardhan Chandel v. Delhi University* (2000)10 SCC 648

<sup>9</sup> *Francis Coralie v. Union Territory of Delhi* (1981) 2 SCR 516

<sup>10</sup> *T. Damodar Rao v. S. O. Municipal Corporation* AIR 1987 AP 171

<sup>11</sup> *LK Koolwal v State of Rajasthan* AIR 1988 Raj 2, 1987 (1) WLN 134

*“Maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizens because health hazards are created.”*

Rights to sleep, nourishment, leisure, peaceful living and dialogue, etc. are such basic liberties without which the enjoyment of life with all human dignity is not imaginable. If these were troubled by noise, their damage would certainly lie within Article 21 of the Constitution particularly in those circumstances where the authorization for the use of such sources of noise has been approved directly by the state government or indirectly through its corporate organizations. In these conditions the state should not be permissible to run away from its accountability if it does not succeed to restrain the method of use of such sources of noise which in the end consequences into the infringement of personal freedoms in addition to initiating a menace of environmental pollution through noise.

A Law residue in adjourned spirit but for the public it turns out to be cognizant of their rights and accessibility of various remedies for their implementation. This point develops more evident just in case of noise pollution for the reason that our common people are still uninformed of the serious consequences of noise pollution. The Constitution of India has also enforced a “fundamental duty” upon all the citizens for the protection of environments. Article 51-A(G)<sup>12</sup> reads:

*“It shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have a compassion for living creatures.”*

It will not be probable to create any noticeable consequences by simply passing of laws, establishing boards and setting noise levels. The acknowledgment and effectiveness of all these developments rest on, in the first sense, on public consciousness of the damaging effects of noise and various solutions existing to curb it. People's participation and lively support is vital for the achievement of several or all the programmes focussed in the direction of obtaining pollution-free environment.

### 3. CONCLUSION AND SUGGESTIONS:

It is the requirement of this period to have a severe rules as well as regulations concerning about the control and prevention of noise pollution. But then again there is a want for crafting universal responsiveness in the direction of the harmful effects of noise pollution. On the whole, in our nation the individuals in general have absence of awareness of the dangerous effects which noise pollution produces. Organizing some of the special discussions as well as speeches in universities, schools and colleges which will focus on the threat of noise pollution as well as the role of the children in stopping it. Every individual has a responsibility to safeguard and put a stop to pollution. The control of Supreme Court must be broadened with regard to environment pollution with the aim of that the court could put on their mind afar the doors and windows of the court with the purpose of enforcing the environmental matters *in toto*.

Some of the suggestions that can be useful for minimizing the present scenario of noise pollution are as follows:

1. Usage of the amplifiers should be for limited works which shall be done by the authorisation of competent authority. The intensity of its volume and the extent of use should be clearly demarcated for various commitments.

<sup>12</sup> The Constitution of India.  
<http://indiacode.nic.in/coiweb.htm>

2. The use of loudspeakers in 500 meters of hospitals as well as educational establishments should be severely debarred and offenders must be fined.
3. The household noise coming from radio, cooking operations, television sets, tape recorders, mixers, washing machines, can be minimalized by their selective and judicious operation. By usage of rugs or any absorbing fabric, the noise produced from felling of items in house can be lessened.
4. Automobile drivers essentially must make least use of hooters, specifically pressure horns, in the populous zones.
5. Automobile generating noises exceeding a distinct level, whether because offaulty silencer or certain other faults, must not be allowed to work on roads.
6. Any industrial campus, small scale or large scale must not be allowed inside 5 km from the boundary of any city.
7. Flying of airplanes, lower a certain height, near the towns should not be permitted except for under emergency circumstances.
8. Explosives and fireworks specifically those of exploding character should be prohibited.
9. Environment courts should be instituted for regulation of noise pollution.
10. Principles for noise emission for motor vehicles should be transformed.
11. Social awareness on noise pollution may be elevated through a country wide attentiveness promotion.
12. At contemporaneous, there is no precise and detailed legislation to control noise pollution. Creation of excessive noise should be punishable under law.
13. Public awareness is very significant for the regulation and prevention of noise pollution. Due to illiteracy most of the individualdearth any

impression about the methods in which noise pollution could be regulated. In this respect television, radio, internet, and newspapers, should give a movement for wide promotional of noise pollution.

14. By plantation noise pollution can be decreased. Plants are competent absorbers of noise, specifically noise of high frequency.

In the end, it can be supposed that as a developing country fronting myriad encounters, fighting noise pollution was not on the primary outline post-independence. It is rationally evident from the above discussion that most of the specifications that now administer the problem of noise pollution are principally residuary and are every so often found missing in legislative will to make any deepmodifications. The purpose of this article is to purely build a background for debateas well as lively discussion on topics.

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