

A Brief Review of the Legislative Aspects of Noise Pollution

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Abstract

With the advancement of science and technology at an unprecedented pace, the urban centers of today's world have evolved not just in size but also in terms of the living conditions provided by them. This has brought about an increasing new awareness about the noise pollution, which has become a part of our day-to-day lives. Studies have been conducted to trace the amount of damage caused by the noise from various natural as well as man-made sources, especially traffic. In fact, noise has come to be associated with the mental, physical, emotional and psychological well-being of an individual, be it human beings or even animals. In legal terms, noise can be considered as an assault on an individual. Apparently, this is a potential hazard to the provisions of sound living conditions and needs to be checked at planning, administrative and judicial level. This paper identifies the various legislative provisions available in India and other parts of the world to check this menace. Reference has also been made to the conclusions from the studies by researchers, legislative cases involving noise pollution and the statistical analysis of the current situation. Thus an attempt has been made to give an overview of the complete scenario of noise pollution-related laws and jurisdictions, to make this paper useful for researchers, planners, administrators and people concerned with the enactment and enforcement of law.

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

Introduction

Noise pollution can be defined as unwanted or offensive sounds that unreasonably intrude into our daily activities. It has many sources, most of which are associated with urban development: road, air and rail transport; industrial noise; neighborhood and recreational noise. A number of factors contribute to problems of high noise levels, including:

- a) Increasing population, particularly where it leads to increasing urbanization and urban consolidation. Activities associated with urban living generally lead to increased noise levels
- b) Increasing volumes of road, rail and air traffic.

Community awareness of environmental noise has increased and there is a higher expectation for commonwealth, state and local government to reduce noise levels.

Although noise is a significant environmental problem, it is often difficult to quantify associated costs. An OECD report in 1995 on the social costs of land transport identified four categories of impact from transport noise⁴:

- a) Productivity losses due to poor concentration, communication difficulties/fatigue due to insufficient rest
- b) Health care costs to rectify loss of sleep, hearing problems or stress
- c) Lowered property values
- d) Loss of psychological well-being.

The economic costs of noise can include costs associated with building noise barriers alongside major transport routes, insulating affected buildings and the lowering of property prices for residential and commercial buildings. Noise costs are difficult to quantify and so estimates can vary widely. Other costs, such as annoyance and impacts on human health or fauna are even more difficult to quantify. There are very few studies of the cost of rail noise.

A study of Australian transport and environment reports the following studies estimating costs of road traffic-associated noise:

- a) The **National Roads Transport Commission (1995)** estimated annual noise costs to be between \$200 and \$400 million.
- b) The **National Roads Transport Commission (1995)** also report an estimate made by the Interstate Commission in 1990 of \$534 million.
- c) A study of the effects of transport noise on residential property values adjacent to arterial roads in Melbourne estimated the annual cost ranged from \$43-86 million for 1992 (**EPA Vic 1994**)
- d) In 1991 it was estimated that it would cost \$750-880 million to reduce traffic noise experienced in all Sydney residences to levels close to the OECD recommended level of 57 dB (A) (**NRMA 1991**).

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In Australia a number of estimates have been made of the impact of aircraft noise on housing prices and have found significant negative relationships between the two. These estimates show that noise depressed house values by between 6-23%⁴. Generally it appears that the impact per unit of noise increases at higher noise levels.

Similar costs may be experienced through other forms of noise pollution. An understanding of expenditure on noise management is important. There is ample room for improving accounting procedures to disclose actual expenditure on management of the ambient noise environment from both state and local government.

Environmental Protection as a Global Issue and its Legislative History in India

Environment is an aggregate of all external conditions and influences affecting the life and development of an organism. Once it is disturbed, no better living conditions for human beings can be created. Hence to make the enjoyment of life more meaningful, the preservation and protection of natural environment must be given priority and the human activities causing ecological imbalance must be stopped forthwith. **Justice P. A. Choudhary** of Andhra Pradesh High Court⁶, while expressing his views on the need of environment in the enjoyment of life and personal liberty under Article of the Indian Constitution in *T. Damodar v. State of Andhra Pradesh* has rightly observed⁶: “The enjoyment of life and its attainment and fulfillment guaranteed by **Article 21** of the Constitution embraces the protection and preservation of natural gifts without which life cannot be enjoyed.”

The view of the learned judge seems to be based on the principle involved in **Article 25** of the *Universal Declaration of Human Rights 1948*⁶ which stresses the quality of human living from the health point of view. It reads: “Every one has a right to a standard of living adequate for the health and well-being of himself and his family.”

The creation of adequate conditions for healthy living of the people is dependent on natural environment. Once it is disrupted by human activities; possibilities of healthy living become quite difficult. The human activities causing ecological imbalance do not recognize territorial boundaries; hence the problem of environmental protection has rather become a global issue before the family of nations, which needs their collective efforts for controlling it.

The global concern for environmental protection found expression in *UN Conference on Human Environment* held at Stockholm in 1972. In pursuance thereof *United Nations Environment Programme (UNEP)* was established to carry out its policies for environmental protection within the framework of United Nations. Further, a common responsibility of the member states for protecting and preserving environment has also been created under **Article 30** of the *Charter of Economic Rights and Duties of the States*⁶. It reads: “The protection, preservation and the enhancement of environment for the present and future generations is the responsibility of the states. All the states shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility.”

The legislative history of environmental protection is more than a century old. **Chapter XIV** of the *Indian Penal Code, 1860* makes certain human activities affecting environment and public health ass punishable. Further **Section 133** of the *Code of Criminal Procedure, 1973* relates to hygienic environment wherein the trades or occupations affecting health or physical comfort of the community can be restrained from carrying on their business. Beside several other enactments like the *Indian Fisheries Act, 1897*, *Indian Forest Act, 1927* are also the examples of some earliest legislation relating to the problem of environmental protection. However, comprehensive legislation to control the problem of environmental pollution was enacted after the *Stockholm Conference* in which India participated. It was followed up by some important enactments like the *Water (Prevention and Control of Pollution) Act 1974*, *Air (Prevention and Control of Pollution) Act, 1981* and the *Environmental Protection Act, 1986* wherein different aspects of environmental pollution have been covered. But still there are certain important points not included in these acts, although their inclusion was quite necessary for environmental protection. One of such points is the creation of separate environmental court, which has recently been suggested by **Shri PN Bhagwati** (former Chief Justice of India) and **Smt. Maneka Gandhi** (former Minister of Environment and Wildlife)⁶. It indicates that the problem of environmental protection should be given utmost priority and be dealt with effective measures.

However, in India there exists no law exclusively which deals with the problems of noise, whereas the developed countries of the world have already enacted specific laws to control the noise pollution. Mention could be made of two such enactments. In England, there has been *Noise Abatement Act of 1960*⁶. **Section 2** of the Act provides that loudspeakers shall not get operated (a) between the hours of nine in the evening and eight in the following morning for any purpose; (b) at any other time for purposes of advertising any entertainment, trade or business. There have been some exceptions provided like the use of loudspeakers by the police, fire brigade, etc. in United States of America, there has been *Noise Pollution and Abatement Act, 1970* for regulating

control and abatement of noise. Apart from this some specific legislation on noise control exists in the United States of America in the form of the *Noise Control Code, 1972 (Federal)*, *New York Noise Control Code, 1972* and *Chicago Noise Control Regulations, 1971*, in Great Britain, *the Control of Pollution Act, 1974* (which covers noise within its Part-III); in Japan, *Noise Control Laws of 1968*, are the specific laws to control the growing problem of noise pollution.

Noise as an Environmental Problem in India

Noise in recent years has emerged as one of the important pollutants of environment. In fact, it needs some legislation for its control like the Air Pollution act and Water Pollution Act but no legislation for it has yet been enacted despite the fact problem of noise is, in no way, less delicate than the problem of air and water pollution. No doubt, there are some central and state enactments which directly or indirectly relate to the problem of noise; however, there is no specific legislation in India as in some other countries to meet the growing challenges of noise pollution on national level.

Noise of *dhol*, *dhapli*, *bigul* and *shankh* has been in the root of our Indian Culture. There is hardly any religious ceremony or festival in India being performed without any noise. But due to the rapid growth of urbanization and industrialization, noise has become a serious challenge to the quality of life of the people in most of the industrialized countries. Noise has rather become a permanent feature in the normal life of the people. The noise carries its adverse effects on human health, animals and birds by way of causing various health hazards. Thus noise is poised to challenge to human survival.

A new problem of noise pollution emerged in recent years in India is an outcome of the indiscriminate use of loudspeakers. Its indiscriminate use from religious places and in performance of religious ceremonies and discourses sometimes makes it so difficult for the people to enjoy their basic freedoms with all human dignity. No doubt in India, enactments for environmental protection exist, but the gravity of the problem of noise pollution has not yet been realized by the Government. However, noise has been included within **Section 2** of the *Air Pollution Act* and further under **section 6(b)** of the *Environment Protection Act* enabling the Central Government to enact the rules for the control of noise pollution. In pursuance thereof the Government notified *Ambient Air Quality Standards* in respect of noise¹⁰. The *Central Pollution Control Board* has also approved **Noise Standards** for different sources of noise, which have not yet been notified by the Government.

No doubt, these noise standards may be helpful in controlling the problem of noise to a greater extent, however, to control the rapid growth of noise in the country and to keep the environment noise-free for the people, some specific and strict legislation to solve the problem of noise pollution has become an urgent need of the day.

Section 3 of the *Bihar Control of the Use and Play of Loudspeakers Act, 1955* provides restrictions against use and play of loudspeakers¹⁰. It reads: "No person shall use and play a loudspeaker:

- a) within such distance as may be prescribed from a hospital, a building in which there is telephone exchange, or
- b) within such distance as may be prescribed from any educational institution established under law or hostel as is in the use of students.

Section 6 of the Act provides that the cognizance of offence under the Act would be on a complaint made by or at the instance of, the person aggrieved by such offence or upon a report in writing made by any police officer.

Existing Legal Provisions for Controlling Noise

Section 268 of the *Indian Penal Code*⁶ states that "A person is guilty of public nuisance who does any act or is guilty of an 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."

Section 290 says that "Wherever one commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to Rs 200/-. Under **Section 133** of the *Criminal Procedure Code*, the Magistrate has the power to make conditional order requiring the person causing nuisance to remove such nuisance.

Major Noise Sources

1. Road Traffic

Road traffic noise is one of the most widespread and growing environmental problems in urban areas. In 1991 it was estimated that in Sydney⁴:

- a) 1.5 million residents were exposed to outdoor traffic noise levels defined by the OECD as undesirable (between 55 and 65 dB (A)), where sleep and amenity are affected.
- b) 350,000 of these residents were estimated to experience noise levels considered as unacceptable (greater than 65dB(A)), where behavior patterns are constrained and health effects are demonstrable (ABS 1997b).

In 1994 the NSW Road Traffic Noise Taskforce reported that road traffic noise has become a major urban environmental problem because:

- a) Historically, land use planning has not been well integrated with transport planning, allowing residential developments and major transport corridors to occur in close proximity without appropriate buffer zones or treatment to buildings.
- b) There has been an increasing community reliance on road transportation, and a reluctance to implement or accept partial solutions involving greater use of public transport.
- c) Traffic on many existing roads through built-up areas has increased well beyond expectations prevailing during planning or construction of the roadways.
- d) Potential solutions, apart from new vehicle noise standards are complex, often costly, and require coordinated actions by a number of agencies and the community.
- e) While there is high community awareness of the problem, there is a general lack of understanding of its extent and possible solutions.

Rule 21 of the *Bihar and Orissa Motor Vehicles Rules, 1930*¹⁰ reads: “(i) The driver of a motor vehicle shall not sound the horn for any purpose other than that ensuring safety in traffic and shall not sound it continuously. (ii) No cut-out exhaust whistles, sirens, klaxons, electric horn and similar appliances of any description shall be used on any motor vehicle in such areas within a district as may be notified by the District Magistrate in this behalf.

Rule 5.5 of *Delhi Motor Vehicles Rules, 1940*⁶ reads: “No matter vehicles shall be fitted with any multitoned horn giving a succession of different tones or with any other sound producing device giving an unduly harsh, shrill, loud or alarming noise.” **Rule 5.6** says that “Every motor vehicle shall be fitted with a device (hereinafter referred as a silencer) which by means of an expansion chamber or otherwise reduces as far as reasonable and practicable the noise that would otherwise be made by an escape of exhaust gases from the engines. While **Rule 5.9** states that: “Every motor vehicle shall be so constructed and maintained as not to cause undue noise when in motion. Identical provisions to the *Delhi Motor Vehicles Rules, 1940* have been incorporated in the *Punjab Motor Vehicles Rules, 1940*.

The impact of road traffic noise on the community depends on various factors such as road location and design, land use planning measures, building design, vehicle standards and driver behavior. Motor vehicle ownership has increased substantially over the last 30 years and general levels of road traffic noise have increased through this period.

Although some site-specific measurements have been taken in response to particular issues, there is a general lack of consistent data on the impact of road traffic on noise levels within the state and even within urban areas. The lack of background noise data collected both before and after construction of new roads or expansion of existing ones, makes it difficult to assess the impact on ambient noise levels.

2. Air Traffic

In the metropolitan area it has been the cause of considerable community concern. The extent of aircraft noise impact depends on the types of aircraft flown, the number of flights and flight paths.

Under **Section 5** of the *Aircrafts Act, 1934*¹ it is expected that aerodromes be constructed far away from residential areas of a city in order to protect residence from the noise created by frequent take-off and landing. Moreover, under the rule-making powers confirmed by **Section 8 (A)** of the *Aircrafts Act, 1934* and its supersession of the *Indian Aircraft (Public Health) Rules, 1946*, Central Government can make rules to control noise pollution for safeguarding health¹⁰

United States Code, Title 49: Transportation, Subtitle VII: Aviation Programs, Chapter 447: Safety Regulation, Sec. 44715. Controlling aircraft noise and sonic boom⁹ empowers the Administrator of the Federal Aviation Administration, as he deems necessary, to prescribe laws and standards to relieve and protect the public health and welfare from aircraft noise and sonic boom.

However, when prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall -

- a. consider relevant information related to aircraft noise and sonic boom;
- b. consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;
- c. consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;
- d. consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and
- e. consider the extent to which the standard or regulation will carry out the purposes of this section.

3. Rail Traffic

There are two main sources of noise and vibration relating to the operation of the rail network: the operation of trains and the maintenance and construction of rail infrastructure.

The level of noise associated with rail traffic is related to the type of engine or rolling stock used, the speed of the train and track type and condition. The population centers served by electric trains, which are generally quieter than diesel, do not face much problem. Areas affected by freight trains often experience higher noise levels than areas affected by passenger trains. The problem of noise is compounded by the requirements of railway operations (especially night operations) and factors such as stopping patterns and topography, which can lead to localized problems.

Rail noise can be considerable, but generally affects a far smaller group of the population than road or aircraft noise as it is generally confined to residents living along rail lines in urban areas. While changes to locomotives and rolling stock mean that they have become quieter over the last few years, railway noise remains a problem because of longer, more frequent and faster trains and the build up of the urban environment.

Neighborhood & Domestic Noise

Other significant sources of noise annoyance in Sydney include barking dogs, car alarms, garbage recycling, lawn-mowers, building construction and household noise. A significant proportion of complaints received by local councils, the police and the EPA are related to neighborhood noise. The national noise survey found that noise from barking dogs and road traffic have the greatest impact on residential communities. Noise from barking dogs is of particular concern because it is unpredictable and often happens repeatedly.

Effects of Noise

Noise is a type of atmospheric pollution. Noise and sound cannot be taken to mean the same thing. The two terms differ in their meaning. It is only when the effects of a sound are undesirable that it may be termed as noise. In acoustics, noise is defined as any undesired sound.

Noise by definition is unwanted sound. What is pleasant to some ears may be extremely unpleasant to others depending upon a number of psychological factors. The sweetest music, if it disturbs a person who is trying to concentrate or to sleep is noise to him, just as the sound of a pneumatic riveting hammer is noise to everyone. In other words, any sound may be a noise if circumstances cause it to be disturbing.

The WHO suggests that noise can affect human health and well-being in a number of ways, including annoyance reaction, sleep disturbance, interference with communication, performance effects, effects on social behavior and hearing loss. Noise can cause annoyance and frustration as a result of interference, interruption and distraction. Activity disturbance is regarded as an important indicator of the community impact of noise. The AEC national noise survey assessed two major disturbances, for example, to listening activities and sleep: 41% of respondents reported experiencing disturbance to listening activities and 42% to sleep.

Nearly 80 million people, 20% of the population of the European Union (EU), are exposed to noise levels high enough to cause adverse effects including annoyance and sleep disturbance. Another 170 million live in areas where noise can cause "serious annoyance" during the day. In terms of costs such as lowered property market value, abatement measures, avoidance, prevention, medical care, and production losses, the annual cost

of noise pollution has been estimated by the European Commission to be as high as E38 billion (or US\$34 million)¹³.

Research into the effects of noise on human health indicates a variety of health effects. People experiencing high noise levels (especially around airports or along road/rail corridors) differ from those with less noise exposure in terms of: increased number of headaches, greater susceptibility to minor accidents, increased reliance on sedatives and sleeping pills, increased mental hospital admission rates. A review article by Dutch scientists *Willy Passchier-Vermeer and Wim F. Passchier*, published in the *March 2000* issue of *EHP Supplements*¹², notes that “there is sufficient scientific evidence that noise exposure can induce hearing impairment, hypertension and ischemic heart disease, annoyance, sleep disturbance, and decreased school performance.”

Exposure to noise is also associated with a range of possible physical effects including colds, changes in blood pressure, other cardiovascular changes, increased general medical practice attendance, problems with the digestive system and general fatigue.

There is fairly consistent evidence that prolonged exposure to noise levels at or above 80 dB (A) can cause deafness. The amount of deafness depends upon the degree of exposure.

Effects of Noise on Life and Liberties

Personal liberty means a bundle of rights, essential for the existence of human life. In *Maneka Gandhi v. Union of India*¹⁰, 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 *AV Chardel v. Delhi University*⁵ that the expression “life and personal liberty” includes a variety of rights, which though not enumerated in Part-III of the Constitution, can be included in various aspects of liberty provided they are necessary for the full development of human personality. Further in *Francis Coralie v. Union Territory of Delhi*, **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.”

Thus the expression “personal liberty” is not confined to the protection of limb and faculty but includes everything essential for the enjoyment of life with all human dignity.

A very important question how far the violation of liberties essential for life caused by the environmental pollution lies within the scope of **Article 21** has been discussed by the **High Court of Andhra Pradesh** in *T. Damodar Rao v. S. O. Municipal Corporation, Hyderabad*⁵. 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 reason why practice of violent extinguishment of life alone should be regarded as violative of **Article 21** of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of **Article 21** of the Constitution⁵.”

Similar question has recently been discussed by **Rajasthan High Court** in *LK Koolwal v State*¹⁰, while issuing the writ of *mandamus* against the municipal corporation of Jaipur, the Court observed: “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, food, recreation, peaceful living and conversation, etc. are such basic liberties without which the enjoyment of life with all human dignity is not possible. If these were disturbed by noise, their violation would certainly lie within **Article 21** of the Constitution especially in those cases where the license for the use of such sources of noise has been granted directly by the state administration or indirectly through its corporate bodies. In these circumstances the state should not be allowed to run away from its responsibility if it fails to control the manner of use of such sources of noise which ultimately results into the violation of personal freedoms besides causing a problem of environmental pollution through noise.

Remedies for Noise Control

To keep the world in its natural state is nothing but a wishful thinking. “Homo sapiens” and its permanent effects on the global community is a “fait accompli”. Development-technological, industries and scientific, is an inevitable consequence of man’s intellect and rational approach. What is needed that we must learn to live with it, by directing and guiding this development towards harmonious and natural human environmental condition.

Even without undermining the technological and industrial progress, we can work towards the quality and long-term survival of human life by sustainable long-term planning and research-oriented development. Some of the concerted efforts, which can be immediately taken in this direction, can be divided into the following categories:

- I) Administrative Remedies
- II) Judicial Remedies
- III) Legislative Remedies
- IV) Public Co—operation
- V) International Co-operation

I) Administrative Remedies: -

Noise pollution is one of the fields in which administrative process seems to enjoy advantage over judicial process in its control and abatement since administration is not only the strong arm of the state with all the coercive powers of the State. As a matter of rule Legislature confers powers upon administrative agencies for the implementation and enforcement of pollution control laws. This rule does not mean that a precise or specific formula must be furnished where flexibility and the adaptation to the legislative policy to infinitely variable conditions constitute the essence of the program, like a case of noise pollution. In such cases the legislature lays down an intelligible principle, specifying the standards or guides in as detailed a fashion as is reasonably practicable in the light of the complexities of the particular problem. Thus, administrative agencies play a vital role in giving effect to any law or legal process and the success or failure of any legislative effort largely depends upon the sincerity and commitment to the cause of the administrative wing of the State. In this context administrative agencies can play an effective role at two levels in controlling the noise pollution:

- a) At planning and policy-making stage of development programmes.
- b) In enforcing the statutes passed by the Legislature.
- c) Administrative agencies involved in policy-making and development programmes can play an effective role in the control of noise pollution. The general techniques can be taken into account in formulating the new development programmes:
- d) Keeping noise at distance: In this way the administrative agencies can avoid the sources of noise by keeping such sources away from the population. While establishing industrial complexes, making railway tracks, highways, by passes of big cities, airport etc., it can be kept in view that all these sources of noise are kept at the maximum possible distance from the human population.
- e) Absorbing noise between its source and the receiver: This means that all efforts should be made to contain the noise within the minimum possible area so that its harmful effects do not extend to other areas.

II) Judicial Remedies: -

Courts can play a very constructive role by their pragmatic judicial approach towards the problems dealing with noise pollution. This is possible by firstly exercising the discretion of judicial review in favor of administrative orders or regulations, which are directed at the control, or abatement of noise pollution. Unless the judicial authorities adopt this approach, the actions and administrative processes with respect to pollution control will not produce desired results. Mere economic injury in itself should not be taken as a sufficient ground for interfering with such administrative actions or orders. Judicial interference in such cases is there only after the affected person had exhausted all administrative remedies and there is genuine reason for interference due to arbitrariness of the order.

The judicial process must emphasize upon the social policies and the requirements of the modern life in providing meanings to any law or rule. Legislative change in a democratic set-up is a slow process, so the judiciary, within its legitimate limits, must come forward through its decisions to keep the law near to real life.

There are many micro-provisions in different statutes that directly or indirectly tend to control noise pollution. Some of these provisions were not enacted to control noise pollution but these provisions too can be logically extended by judicial interpretation so as to provide an effective remedy in cases of noise pollution, which can be discussed under the following main headings:

- a) Punitive Action
- b) Preventive Action
- c) Remedies under the law of Tort (Compensatory)

- a) **Punitive Action:** - Punitive action means prosecution and ultimately punishment of the person causing environmental pollution. Since there is no direct provision regulating noise pollution but certain existing provisions of the various laws can be of great help.

(i) *Provisions under the Indian Penal Code*⁶:

Penal Code is the major enactment in the field of criminal law providing for substantive penal provisions. Chapter XIV of the Code provides certain sections dealing with the offences affecting public health, safety, convenience, decency and morals. Some of the sections in this Chapter have a direct bearing on noise control.

- **Section 268 provides:** 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. A common nuisance is not excused on the ground that it causes some convenience or advantage.
- **Section 278 provides:** Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of a person in general, dwelling or causing on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to Rs 500/-
- **Section 290 provides:** Whoever commits a public nuisance in an case not otherwise punishable by this Code, shall be punished with fine which may extend to Rs 200/-

(ii) *Motor Vehicle Act, 1939*

Under the Motor Vehicles Act, State governments are competent to make rules for the upkeep of the motor vehicles and control of noise produced by them. The rules framed under the Act have empowered certain executive officers to take appropriate action against the persons violating the rules. These rules prohibit the use of certain types of horns⁹ and also provides that at certain places like hospitals, schools etc., horns cannot be used. Similarly, all vehicles are required to use silencers so that the level of noise can be reduced at source.

b) **Preventive Action**

(i) *Criminal Procedure Code*

The criminal procedure code, 1973 in chapter X (section 133 to 146) provides for the preventive action in case of public nuisance. The relevant portion of section 133 of criminal procedure code provides as follows:

Section 133. Conditional order for removal of nuisance¹⁰:

Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in his behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers:

- That any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public: or
- That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated: or
- That the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped: or
- That any building, tent or structure, or any tree is such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary: or
- That any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public: or
- That that any dangerous animal should be destroyed, confined or otherwise disposed of.

The Supreme Court of India in its judgment in the case of *Viridichand v. Ratlam Municipality* has provided new dimension to this section⁶. **Justice Krishna Iyer**, delivering the judgment in the case, observed: “The criminal procedure code operates against statutory bodies and others regardless of the cash in the coffers – otherwise a profligate statutory body or pachydermic

governmental agency may legally defy duties the law by urging in self-defence a self-created bankruptcy or preventer expenditure budget. That cannot be.”

A judgment of the **Himachal Pradesh High Court** has also pointed out the apathy and neglect of the administrative authorities in adopting a “non-concern” attitude towards the public difficulties. The judgment reads: “When loudspeakers are allowed to disturb the neighbourhood, it is the duty of the police and the Deputy Commissioner to take appropriate action against those creating a nuisance and not wait for suffering public to protest to the police.”

(ii) *Preventive Action Under Civil Procedure Code, 1908*⁶

Under the Civil Procedure Code also preventive action can be taken in case of any public nuisance. **Section 91** of the *Civil Procedure Code* provides:

In case of public nuisance or other wrongful act affecting or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted:

- (a) By the Advocated General, or
- (b) With the leave of the court, two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

(iii) *Local Enactments*

There are many local enactments of different states incorporating the provisions, which tend to control Noise pollution. Reference can be made to State of Madhya Pradesh, Bihar, Rajasthan enactments which provide for a control of the use and play of loudspeakers.

Similarly, under the *Punjab Gram Panchayat Act, 1952* a duty has been imposed upon the Gram Panchayat to make arrangement for carrying out the requirements of the Sabha in respect of the following matters:

- **Section 19(h):** public health and sanitation,
- **Section 19(x):** measures to promote the moral, social and material well-being or convenience of the inhabitants of the Sabha area.

Thus, Gram Panchayat by passing a resolution can regulate or totally ban the use of loudspeakers, one of the main source of noise pollution in the villages.

Now it has been clearly established by scientific research that excessive noise can cause physical and mental injury, directly affecting the health of a person. So excessive noise can be treated as a form of assault and battery in the lay of tort and action for that must be upheld by the courts.

The United States Code, Title 42 -- The Public Health and Welfare (Chapter 65 -- Noise Control) § 4901. Congressional findings and statement of policy states that-

The Congress finds:

- that inadequately controlled noise presents a growing danger to the health and welfare of the nation's population, particularly in urban areas;
- that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and
- that, while primary responsibility for control of noise rests with state and local governments. Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

c) *Compensatory Remedies Under the Law of Tort*⁶

The remedies under the law of tort, which is totally a judge-made law, are the important field where judicial activism can play a very vital role in controlling “noise pollution”. Noise pollution is actionable if it amounts to nuisance, and then action for the tort of “nuisance” can lie.

Now it has been completely established by scientific research that excessive noise can cause physical and mental injury, directly affecting the health of a person. So excessive noise can be treated as a form of assault and battery in the law of tort and action for that must be upheld by the courts.

III) *Legislative Remedies*

Law is an instrument of social change and legislature is the authority of law making process. All other authorities like administrative agencies, courts and other social institutions concerned with environmental protection derive their powers from the passed by the legislature and operate within the limitation prescribed by law. Thus, legislative action is the most effective approach to governmental and judicial action against noise pollution.

The remedies already available are scattered in various enactments and are not adequate and effective in tackling with this new and technical by-product of technological advancement of the society. Many development countries like U.S.A., U.K., Japan etc., have already passed comprehensive laws, longback, dealing with noise pollution¹. In India there is no specific and detailed legislation to control noise pollution. It is an urgent need of the present day that the Central Government should pass a comprehensive legislation dealing with various types of noise pollution and their control. Otherwise also it is a constitutional obligation of the State to create conditions in the society in which a person can develop his personality to the fullest extent. Safeguarding the natural environment is one of these conditions. **Article 42** in the *Constitution*¹⁰ speak of “just” and humane condition of work” not only for a microscopic minority of a privileged class of the society but also for the army of wage earners who work in factories and industrial establishments. In view of the industrial development increase in vehicular traffic on roads in ever-increasing views of aircrafts for transport, enactment or a separate legislation to control noise is an impending necessity. In this regard the *U.S. Noise Pollution And Abatement Act of 1970* can serve as a model, subject to the changes and modification as per the requirement of our own society. The following feature of the act can be incorporated:

- a. There must be a Central Board for noise pollution control consisting of experts from the field of science, technology and Law for the purpose of formulating policies and programmes for noise control.
- b. Similar Boards may be constituted for all States and for Metropolitan cities.
- c. Level of noise may be fixed for traffic vehicles, aircraft, industrial establishment and Railways. Similarly use of loudspeaker should be regulated both for noise level as well as times of days during which it is permissible.
- d. Administrative set-up must be there with power to provide summary and effective relief to the victims of the noise as judicial remedies are time consuming and expensive.
- e. Specialized and Special Courts must be established to deal with the cases of noise pollution because of the technical nature of the problem. Summary procedure for the trial of such cases be prescribed.
- f. Enforcement authorities, including administrative set-up be made accountable for non-performance of their duties.
- g. A special tax may be imposed on all the vehicles and other sources of noise pollution in order to provide sufficient funds to implement the programmes and policies of noise pollution control.

IV) Public Co-operation

Law remains in suspended animation unless the public becomes conscious of their rights and availability of various remedies for their enforcement. This fact becomes more conspicuous in case of noise pollution because our masses are still ignorant of the grave effects of noise pollution. The Constitution of India has also imposed a “fundamental duty” upon all the citizens for the protection of environments.

Article 51-A(G)¹⁰ 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 possible to produce any tangible results by merely passing of laws, constituting boards and fixing noise levels. The acceptance and effectiveness of all these measures depend, in the first place, on public awareness of the detrimental effects of noise and various remedies available to control it. People’s involvement and active co-operation is essential for the success of any or all the programmes directed towards securing pollution-free environment. For seeking and securing public co-operation, to make natural environment a people’s movement, the following measures will prove effective:

- a) Education of dangerous consequences of noise pollution through mass media like cinema, Radio, television and public relation departments of the Government.
- b) Making the people aware of the various legal and other remedies available to them for the control of noise pollution.

- c) Involving the people actively in the environmental protection movement through educational and social organizations.
- d) Encouraging and financing the social organizations engaged in the protection of the environment.

V) International Co-operation

International Co-operation can also help in great way to delay with the problem of noise pollution. National action needs to be supplemented by international measures and co-operation. This co-operation can help especially the developing countries who do not possess latest technology and are financial unable to conduct their own research programmes. International co-operation can help in the following manner in controlling noise pollution.

- a) Exchange of technology equipped with lesser noise producing equipments.
- b) Exchange of research programmes directed towards various methods of noise control.
- c) Exchange of legal and other methods used in controlling noise pollution.
- d) Learning from the success or failure of others.

In India there is already a change in the attitude of policy-makers, legislature and the courts, which are the three main institutions for the successful implementation of any programme. A new Department of Environment has been established. Water and Air Prevention of Pollution laws have been passed.

Conclusions and Recommendations

Conclusions and recommendations, suitable for adoption in Indian condition are stated below:

- 1) The existing enactments, which directly or indirectly relate to the problem of noise pollution in India, are found inadequate to control it on national level. Hence, there is need to have some specific and effective legislation to control noise pollution in the country which will be best suited to Indian culture and social set-up.
- 2) Promogulation of noise standards from various component sources at specific time of the day by the government.
- 3) Recognition of the right of the citizens to enjoy noise-free environment through some constitutional guarantee.
- 4) Declaration of noise as an offence on personal liberty and healthy living.
- 5) Creation of separate Courts for the trial of cases of noise.
- 6) Prescribe volume / pitch level for loudspeakers at religious places, processions / public gathering and festivals.
- 7) Award of compensation to affected individuals/people.
- 8) Fix responsibility on the local bodies and administrative authorities for strict vigil on noise sources along with training them about the procedure to deal with noise offences.
- 9) Appoint inspectors in local bodies for mounting check on noise proliferation due to social activities.
- 10) Removal of pressure horns from all vehicles. Provision of public complaints against used of pressure horns by government vehicles, administrative authorities, local bodies, and affluent people.
- 11) Ban industrial and noisy trades / works in residential areas.

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