

RELIGIOUS PRACTICES *VIS-A-VIS* NOISE POLLUTION

CHURCH OF GOD (FULL GOSPEL) IN INDIA v. K.K. R. MAJESTIC COLONY WELFARE ASSOCIATION AND OTHER¹ — A Comment

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Church of God (Full Gospel) in India v. K.K. R. Majestic Colony Welfare Association (Church case) is a laudable reflection of apex court's sensitivity towards growing environmental awareness and widening of the horizons of knowledge to potential environmental hazards.

The controversial question in the *Church case* revolves around the right of a community or sect of that community to add to noise pollution on ground of religion. K.K. R. Majestic Welfare Association (Welfare Association) made a complaint to the Tamilnadu Pollution Control Board and Superintendent of Police stating therein that prayers in the Church of God (Full Gospel), located at K.K.R. Nagar were recited by using loudspeakers, drums and other sound producing instruments which caused noise pollution thereby disturbing and causing nuisance to normal day life of residents of said colony. The High Court directed the Church to bring down the noise level by keeping their speakers at a lower level, while pointing out that there was nothing of malice and malicious wish to cause any hindrance to free practice of religious faith of Church on basis of Madras City Police Act, 1888, Madras Towns Nuisance Act 1989 and Noise Pollution (Regulation and Control) Rules 2000 framed by the Central Government under the provisions of Environment (Protection) Act 1986 read with Rule 5 of the Environment (Protection) Rules, 1986. Aggrieved by the order an appeal was filed by the Church in the apex court. The Supreme Court affirmed the order passed by High Court.

The Church case raises some issues of seminal importance, viz. problem of noise pollution, adequate legal safeguards, the rights of religious communities *vis-a-vis* noise pollution, measures to control this menace. An effort is made in this paper to discuss these issues.

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1. 2000 (6) SCALE 163.

I. NOISE POLLUTION — A MENACE

It is not possible to give a precise definition of sound or noise. Sound of different frequencies and intensities could be termed as noise under certain perceptual conditions. In electronic and information theory, noise means random unfractionable and undesirable signals or changes in signals that mask desired information content. In acoustics noise is defined as any undesired sound.² The Encyclopaedia America³ defines noise as an 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 pneumatic riveting hammer is noise to everyone. In other words, any sound may be noise if circumstances cause it to be disturbing.

Paradoxically all living beings including human beings cannot think of life without sound. But on the other hand they complain that it is a cause of psychological stress or physiological damage to them. Excessive noise or sound contribute to interference to the human environment by their own actions. Though noise does not adversely affect or damage the environment physically or chemically as in the case of air and water pollution, but it certainly is a pollutant when exceeds permitted levels of intensity. Thus, noise pollution is the condition where the noise has the characteristics to injure public health or which unreasonably interferes comfortable enjoyment of life and property.

The sources of noise pollution may be divided into two categories, namely industrial and non-industrial. The industrial source includes noise from machines, modern equipments, small factories and industrial establishments. The non-industrial includes loudspeakers, automobiles, aircrafts, trains, construction works, generator sets, social and religious celebrations, speeches etc.

Noise being one of the main pollutants of the environment carries its adverse effect on human health by way of causing various hazards depending upon its frequency, intensity and duration.⁴ It may cause permanent⁵ or temporary hearing loss,⁶ speech interference,⁷

2. 16 ENCYCLOPAEDIA BRITANNICA (1968) at 556-58.

3. 20 ENCYCLOPAEDIA BRITANNICA (1969) at 400.

4. N.S. Kamboj, CONTROL OF NOISE POLLUTION (1999).

5. World Health Organisation, ENVIRONMENT HEALTH CRITERIA 12 NOISE (1980) 1 at 13.

6. *Ibid.*

7. S.R. Khirsagar, *Noise as an Occupational Hazard and Public Nuisance*, 53 JOURNAL OF THE INSTITUTE OF ENGINEERING (1980) at 61.

cardiovascular problems and blood pressure,⁸ annoyance,⁹ loss of efficiency,¹⁰ sleeping disturbances¹¹ and miscellaneous symptoms like decreased electrical resistance in skin, reduction of gastric activity and digestive system upsets.¹²

The adverse consequences of noise pollution have been felt on animals also.¹³ The laboratory exposure of animals to short loud sounds can cause diverse effects, such as a temporary rise in breathing and heartrates, a rise of blood pressure or lessened flow of gastric juice; but these responses quickly subside when the noise ceases.¹⁴

The measure of noise is known as the decibel. Noise researchers have shown that continuous noise level in excess of 90 decibels (one decible is the threshold of hearing, 30 decibels comes near whispering range and 60 decibels denotes the level of normal talk) can cause loss of hearing and irreversible changes in nervous system. The World Health Organization has fixed 45 decibels as the safe noise level for a city, though the four metropolitan cities of Mumbai, New Delhi, Calcutta and Chennai have usually registered more than 90 decibels. Mumbai has been rated as the third noisest city in the world, followed by New Delhi and if control measures are not taken to reduce the sound level, the result would be alarmingly disastrous.¹⁵

II. LEGAL PROVISION — ADEQUACY: A DEBATEABLE ISSUE

Till date, there is no specific legislation dealing with noise pollution. However, there are some scattered provisions contained in different enactments which make a reference or touch upon this pertinent issue.

Constitution

The Indian Constitution mandates the State in *parens-patriaetic* fashion to secure public health for its citizen as well as protect and improve the environment. Article 39 (e) of the Constitution provides: The State shall, in particular, direct its policy towards securing—

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8. World Health Organization, *Noise*, HEALTH HAZARDS OF HUMAN ENVIRONMENT (1980) 257 at 260-261.
 9. *Supra* n. 5 at 16.
 10. Donald Stewart, *Some Occupational Effects of Noise*, 75 JOURNAL OF LARYNGOLOGY AND OCTOLOGY (1990) at 479.
 11. *Supra* n. 8 at 261.
 12. *Supra* n. 7 at 61.
 13. *Supra* n. 4 at 20.
 14. *Supra* n. 7 at 61.
 15. World Health Organization, ENVIRONMENT HEALTH CRITERIA (1996).

That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 47 enjoins upon the State to raise the level of nutrition and the standard of living and improve public health.

Article 48-A provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51-A(g) provides to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

The judicial interpretation has further strengthened these constitutional mandates by interpreting appropriate environment under one's right to life within Article 21 of the Constitution. In *L.K. Koolwal v. State of Rajasthan*,¹⁶ the court rightly observed:

Maintenance of health, preservation of the sanitation and environment fall within the purview of Article 21 as it adversely affects the life of the citizen and amounts to slow poisoning and reducing the life of citizen because of hazards created if not checked.

*The Air (Prevention and Control of
Pollution) Act, 1981*

Prior to 1987, the Air Act 1981 did not have any provision relating to noise pollution. However, the 1987 amendment has recognised noise as an air pollutant. Section 2(a) defines air pollutant as—

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.

Further, both the Central and State Pollution Control Boards in exercise of their power and functions under sections 16 and 17 of the Act not only include noise within their plans and programmes meant for abatement of air pollution but also lay down the noise standards, alongwith the standards of other air pollutants regarding industrial plants and automobiles.

16. AIR 1988 Raj 2.

The Environment (Protection) Act, 1986

Being a legislation of general nature for environmental protection, the Act empowers the Central Government under section 3 of the Act to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and controlling and abating environmental pollution.

Keeping in view the objective of maintaining the ambient air quality standard in respect of noise, the Central Government in exercise of its powers conferred by clause (ii) of sub-section (2) of section 3, sub-section (1) and clause (b) of sub-section (2) of section 6 and section 25 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986 framed the Noise Pollution (Regulation) Rules, 2000. These rules relate to maintaining of ambient air quality standards in respect of noise in different areas/zones, responsibility as to enforcement of noise pollution control measures, restrictions on the use of loudspeakers/public address systems, consequences of any violation in silence zones/areas, authorities to whom complaints may be made for violation of the rules and the power to prohibit the continuance of noise pollution. They are as under :

Rule 3 — Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/Zone	Limits in dB(A) Leq.	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

Note :

- (1) Day time shall mean from 6.00 am to 10.00 pm.
- (2) Night time shall mean from 10.00 pm to 6.00 am.
- (3) Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by the competent authority.

- (4) Mixed categories of areas may be declared as one of the four above-mentioned categories by the competent authority.

Other relevant rules for controlling noise pollution are:

Rule 4: Responsibility as to enforcement of noise pollution control measures—

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

Rule 5: Restrictions on the use of loudspeakers/public address system—

- (1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.
- (2) A loud speaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except auditoria, conference rooms, community halls and banquet halls.

Rule 6: Consequences of any violation in silence zone/area—

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

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

Rule 7: Complaints to be made to the authority—

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

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

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

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

Criminal Law

Noise pollution is a type of public nuisance which is covered under section 268 of the Indian Penal Code. The section reads as:

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 dwells or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use public right.

A much better, independent, speedy and summary remedy against public nuisance is provided in sections 133 to 144 of the Code of Criminal

Procedure of 1973. It empowers the Magistrate to pass a conditional order for the removal of public nuisance within a fixed period of time on information received from a police report or any other source including a complaint made by a citizen.¹⁷

Transportation Law

The various modes of modern transport are a great source of noise pollution and each day it is aggravating the problem.

The Aircrafts Act, 1934—Although the Act does not have any specific provision relating to noise pollution, but under section 8(A) of the Act and the Indian Aircraft (Public Health) Rules 1946, the Government can make rules to control noise pollution for safeguarding public health.

The Motor Vehicle Act, 1988 — The Act covers the problem of noise pollution caused by motor vehicles. Section 110 (h) empowers the Central Government to enact rules for the reduction of noise emitted by vehicles. The State Governments, in exercise of their powers under section 111 (b), (c) and (g) can make rules for regulating the audible signals, appliances likely to cause annoyance, radios, tape-recorders, audio-visual etc. Further, section 190(2) provides that any person who drives or cause or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to the road safety, control of noise and air pollution, shall be punishable for first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

The railways, being a great source of noise pollution does not have any provisions in the Railways Act of 1989, dealing with this problem.

Factories Act, 1948

Although the word 'noise' has not been used specifically in the Factories Act, 1948 but the word 'nuisance' in section 11 of the Act may embrace noise in its ambit. There is an indirect reference of protection from noise pollution by making it obligatory on the part of the occupier to keep factory clean and free from any drain, privy or other nuisance.

The above mentioned statutory provisions are only touching upon certain aspects of noise pollution. They are only passing references. There is a need that a comprehensive and strict legislation for effective control of noise pollution be enacted by Parliament. However, the Noise

17. Armin Rosencranz, Shyam Divan, Martha L. Noble, ENVIRONMENTAL LAW AND POLICY IN INDIA (1986).

Pollution (Regulation and Control) Rules, 2000 which have come into effect from 14th February 2000 is a laudatory step which was long overdue for dealing with problem of noise pollution. But it is too early to comment on their effectiveness - time will only tell.

III. RELIGIOUS PRACTICES *VIS-A-VIS* NOISE POLLUTION — A JUDICIAL REVIEW

The Constitution of India guarantees the right to freedom of religion under Articles 25 and 26 to its citizens. Both the Articles should be read together. The right guaranteed by Article 25 is an individual right as distinguished from the right of an organised body like the religious denomination or any section thereof dealt by Article 26. Both these articles protect matters of religious doctrine or belief as well as acts done in pursuance of religion — rituals, observance, ceremonies and modes of worship. But these articles are subject to the limitations of public order, morality and health.¹⁸

The right to propagate one's religion can become meaningful and effective through the right of speech and expression as envisaged under Article 19(1) of the Constitution. However, Article 19(1) (a) is subject to reasonable restriction in the interest of sovereignty and integrity of India, security of state, friendly relation with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Infact the freedom of speech and expression under Article 19(1)(a) and that of religion under Articles 25 and 26 of the Constitution are inseperable as one cannot be enjoyed without the exercise of another.¹⁹ Although no religion prescribes or preaches that prayers are required to be performed through loudspeakers, voice amplifiers or drum beating, but practically speaking propogation of religious ideas is done through these means. At this point, the real controversy lies—whether use of loudspeakers, voice amplifiers, beating of drums which create the problem of noise pollution should be allowed to continue within the enjoyment of right to freedom of speech and expression and that of religion?

Not many, but in some cases the judiciary has tried to answer this question.

*Om Birangana Religious Society v. The State of West Bengal and others*²⁰ is an authoritative precedent in this regard. The petitioners, a

18. V.N. Shukla. CONSTITUTION OF INDIA (1992).

19. *Supra* n. 4 at 71.

20. CWN 1995-96, vol. 100 at 617.

religious organisation moved a writ petition before the court for seeking its direction to the District Magistrate and Circle Inspector of Police that they should not interfere with the rights of the petitioners to use microphone and loudspeakers while performing puja, religious songs and other religious activities.

The court posed certain questions for consideration—whether the public are captive audience or listener when permission is given for using loudspeakers in public and the person who is otherwise unwilling to bear the sound and/or the music or the communication made by the loudspeakers, but he is compelled to tolerate all these things against his will and health? Does it concern simply a law and order situation? Does it not generate sound pollution? Does it not affect the other known rights of a citizen like right to speak with others, read, sleep, rest, think? Does he not become a captive audience to listen when the citizen is ill and when such a sound may create adverse effect on his physical and mental condition? Keeping in view the aforesaid considerations and answering in affirmative the court held that:

It cannot be said that the religious teacher or spiritual leaders who had laid down these tenets, had any way disired the use of microphones as a means of performance of religion. Undoubtedly, one can practice, profess and propogate religion, as guaranteed under Article 25(1) of the Constitution but that is not an absolute right. The provision of Article 25 is subject to the provision of Article 19(1)(a) of the Constitution. On true and proper construction of the provision of Article 25(1) read with Article 19(1)(a), it cannot be said that a citizen should be coerced to hear any thing which he does not like or which he does not require or which cause noise problems.

The Court cited two cases in support of its decision — *Masud Alam v. Commission of Police*²¹ and *State of Bombay v. Narash Appa Mali*.²² In both these cases it was held that if religious practice runs counter to public order or health or a policy of social welfare upon which the state has embarked then the religious practice must give way before the good of the people of the state as a whole.

Similarly in *Appa Rao, M.S. v. Government of Tamil Nadu and another*,²³ the Division Bench of Madras High Court directed the

21. CWN 1954-55, vol. 59 at 293.

22. AIR 1952 Bom 84.

23. 1995 ILW, vol. 115 at 319.

Government to ensure that use of amplifiers and loudspeakers in performing religious ceremonies must be permitted to the extent that they do not cause noise pollution and have adverse effect on the health of people.

Recently, the Orissa High Court on *Bijayananda Patra v. District Magistrate, Cuttack*²⁴ observed that right to use loudspeaker betokening a religious festivity or practice is subject to public order and health only to the extent it does not cause noise pollution.

The Supreme Court deserves appreciation for its judgment in the present *Church case* where it has once again proved that it is the protector, defender and guardian of people whenever it decides questions of prioritisation of human needs and values systems. For the judiciary, the right to life comprehends right to safe environment, including safe air quality including noise. The court rightly opined that the level of noise is only permissible to the extent that it is not a source of noise pollution and perpetual nuisance to the normal day life resident. In an organized society, rights are related with duties towards others including neighbours. Undisputedly no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. In a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day-time or other persons cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his studies without there being any unnecessary disturbance by the neighbours. Similarly, old and infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured. Further, it may cause interruption of sleep, affect communication, loss of efficiency, deafness, high blood pressure, depression, annoyance, mental stress etc. The extent of damage depends upon the duration and intensity of noise.²⁵

An overview of these decisions reflects judicial policy of curbing the menace of noise pollution caused by religious practices in the name of 'public order and health'. One thing that can conceivably cover a ban on

24. AIR 2000 Orissa 70.

25. *Supra* n. 1, para 2.

noise by loudspeakers for religious practices can of course, be 'decency or morality' as used under Article 19(2) of the Constitution. According to Oxford American dictionary (1998), the word 'decency' means the requirement of correct behaviour, whereas 'morality' means right moral conduct. Both these words are covered under one generic head.

The law is well settled with respect to 'decency or morality' as a ground on which freedom of speech and expression may be reasonably restricted. Decency connotes the same as lack of obscenity. Obscenity becomes a subject of constitutional interest since it illustrates well the clash between the right of the individual to freely express his opinions and the duty of the State to safeguard the morals. Thus, the right to freedom of speech cannot be permitted to corrupt the community and therefore, writings or other objects, if obscene, may be suppressed and punished because such action would be to public decency and morality.²⁶

The decency or morality as reasonable restrictions for use of loudspeakers to add to noise pollution on ground of religion must be relooked in light with environmental jurisprudence. Today, society's interaction with nature is so extensive that environmental question has assumed all proportions affecting all humanity. Environmental degradation and pollution has seriously threatened the human existence. A need is felt to discard moribund approach and examine the issues by addressing to the social realities and demands of time. Pragmatism must have overriding effect over theoretical, emotional considerations. Legislative, administrative and judicial strategies of harmonising of environmental values with social, religious, developmental values are a must and are to be formulated in the crucible of prevalent socio-economic conditions in the country.²⁷ As the word 'decency' means the requirements of correct behaviour, a new environmental dimension may be given by submitting that the correct behaviour demands that one must act in such a manner that it does not annoy or interferes with the quality of life of a class of persons who come within its neighbourhood. The moment there is an unreasonable interference with a general right of public, it becomes a case of NUISANCE. It is both a tort and a crime under modern environmental law. Similarly the word 'morality' connotes right moral conduct. The moral conduct essentially is concerned with accepted rules and standards of human behaviour. In an organized society, rights are related with duties towards others including neighbours. Enjoyment of

26. *Supra* n. 18 at 89.

27. P. Leelakrishnan, ENVIRONMENTAL LAW IN INDIA (1999).

one's rights must be consistent with the enjoyment of rights also by others. So from environmental point of view, enjoyment of right is permissible only to the extent that it coexists in harmony with the others. The moment it hurts, annoys or interferes with the rights of the others, it becomes NUISANCE.

Thus, 'decency or morality' should be redefined, re-evaluated in an environmentalistic spirit and manner, which could give a legal justification and provide solution to solving the problem of noise pollution *vis-a-vis* propagating religious practices.

IV. CONCLUSION AND SUGGESTIONS

The *Church case* is a judgement of providence and prudence where the Supreme Court has shown its anxiety for combating environmental assaults caused by human activities. The noise polluting activities i.e. use of loudspeakers, amplifiers, beating of drums in the name of religion, religious faith and practices are so much that they are threatening as slow agents of death.

In order to curb noise pollution, some immediate measures are needed to be taken, some of them being as follows:

- (1) the prescribed standards regarding noise by Government of India may be enforced strictly in letter and spirit;
- (2) a separate self contained legislation dealing with all aspects of noise pollution may be enacted;
- (3) separate courts regarding noise pollution may be established;
- (4) the case should be decided within a prescribed time limit;
- (5) all District Magistrates and Sub-Divisional Magistrates should be empowered to issue prohibitory order under section 144 of Code of Criminal Procedure, 1973 limiting the hours of loudspeaker in religious places and for other social gatherings and functions;
- (6) the press and media should play a constructive role to highlight the disastrous effects of noise pollution and its remedy;
- (7) the judiciary must have a progressive, interpretive, positive 'green bench' approach keeping in view the Indian socio-economic aspects in mind and in the era of present day industrial and global economic unification;

In a fast developing country like India, judiciary along with legislative and administrative authorities will surely be a guarantee to protect and improve the environment.