

DO PRAYERS NEED LOUDSPEAKERS?

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“Liberty of an individual must be thus far limited; he must not make himself a nuisance to other.”

- *J.S Mill*

INTRODUCTION

The use of loudspeakers and amplifying devices in religious procession has become very common in India. Nowadays, people have been using amplifying devices in religious processions to the extent that it has become one of the most common features of such processions.ⁱ The consistent noise created due to the loudspeakers sounds at the religious functions such as Durga Pooja, Azan Recitation, noises created during the Diwali, Holi and other festivals has become a daily exercise. During Navaratri, the loudspeakers and amplifying devices are continuously played for the whole night till the morning. The authorities have failed to get rid of it since a long time.ⁱⁱ People do not know about its illegality and treat it like their right. All this contributes to noise pollution which creates a lot of difficulty and health hazards for people.

Recently, Allahabad High Court passed a Judgment that recitation of Azan via loudspeaker is not protected under Article 25 as it is not an integral part of Islam.ⁱⁱⁱ It has raised several questions in the legal domain of our country. The questions which needs to be analysed is the legality and rights for the use of loudspeakers. Does it form an integral part of the religion, is it hazardous for the health and what kind rights of others it can violate by being hazardous for the for health.

RIGHT TO FREEDOM OF RELIGION AND USE OF LOUDSPEAKER

"Scholars have regularly pointed out that in secular states the involvement of courts in religious matters is commonplace. There are two main reasons for this. One is that in the modern state, "religion is, in part, constituted using the law, but simultaneously as something that is constituted to stand at arm's length from the law" (Lambek 2013:1)."^{iv}

Article 25 talks about Freedom of conscience and free profession, practice and propagation of religion. It states that,

- (1) Subject to public order, morality and health and the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

However, clause (2) of this article states that **"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law"**.

Therefore, Article 25 is not absolute and it can be restricted by making laws.^v

The Supreme Court in *Church of God (Full Gospel) v. K.K.R Majestic Colony Association*, 2000, held that "the court may issue orders and directions to control the noise pollution even if is occurring due to a religious activity or it is in connection with it."^{vi} Therefore, the court has the power to restrict religious activities due to which noise pollution is happening directly or indirectly. 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 drums. These activities disturb old or sick persons, students or children.^{vii}

Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression.

1. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute.
2. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers.
3. While one has a right to speech, others have a right to listen or decline to listen.
4. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others.^{viii}

RIGHT TO SLEEP AND RIGHT TO PRIVACY

Article 21 of the constitution includes **Right to Sleep** and **Right to Privacy** as well. An individual is entitled to sleep comfortably, undisturbed and as freely as he breathes. Therefore, sleep is basic requirement for leading a healthy life. To disturb sleep, therefore, would amount to torture which is a human right violation. ^{ix}

Anyone who wishes to “live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him.”

1. No one can claim a right to create noise even on his premises which would travel beyond his precincts and cause a nuisance to neighbours or others.
2. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is a nuisance.^x

If anyone increases his volume of speech and that too with the assistance of artificial devices to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. **Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21.**^{xi}

NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000

Rule 4 of **Noise Pollution (Regulation and Control) Rules, 2000** under the **Environment (Protection) Act, 1986** states that,

1. The noise level in any area shall not exceed the ambient air quality standard and,
2. The authority assigned shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect to the noise.

Rule 5 of the **Noise Pollution (Regulation and Control) Rules, 2000** read: Restrictions on the use of loudspeakers/public address system:

1. A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.

2. A loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community and banquet halls.
3. Notwithstanding anything contained in sub-rule (2), the State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit the use of loudspeakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious occasion of a limited duration not exceeding 15 days in all during a calendar year.^{xii}

However, under no circumstance's permission can be given between 12:00 am to 6:00 am.^{xiii}

4. The noise level at the boundary of the public place, where the loudspeaker or public address system or any other noise source is being use shall not exceed 10 dB (A) above the ambient noise standards for the area or 75dB (A) whichever is lower;
5. The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB (A) the ambient noise standards specified for the area in which it is used.^{xiv}

RELIGIOUS FREEDOM FOR THE USAGE OF AMPLIFYING DEVICES

No person has the right to take away the right of others. There is no religious freedom in this country except Article 25 of the constitution which is subject to public order, morality and health and other provision including Article 19(1)(a).^{xv} No person has the right to make other persons captive listener. A person cannot be forced to listen to something which he does not want to as it is his/her fundamental right.^{xvi}

Sound is a known source of pollution. The religion that has been performed by the petitioner and others, is nothing new, but the same is there for several centuries. It cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion.^{xvii} **Right to speech implies the right to silence, which implies not to listen and not to be forced to listen.**^{xviii} Further, in the case of Public Utilities Commission of the District of Columbia et al. v. Pollak et al. in the US Supreme Court, Justice Douglas observed by dissenting from the majority judgment that, "Right to be let alone is the beginning of all freedoms."^{xix} When we force others to listen to

one's ideas, we give the propagandist a powerful weapon. One man's lyric may be another's vulgarity."^{xx}

HEALTH HAZARDS DUE TO NOISE POLLUTION

Exposure to excessive noise for long durations cause a long range of health problems, such as poor concentration, stress, fatigue due to lack of sleep, low productivity at workplace.^{xxi} It can even cause cardiovascular disease, cognitive impairment, hearing losses and tinnitus.^{xxii} A report by WHO^{xxiii} observed that at least one million healthy years of life are lost each year due to noise pollution. They ranked the noise pollution at second rank among environmental threats to public health. They noted that while other forms of pollution are decreasing, noise pollution is increasing.

These high noise levels could have socioeconomic and health impact on the neighbours. By and large, the variation on diurnal noise levels at the noise monitoring sites was significant and the measured noise levels were high.^{xxiv} In the study, the respondents who are older people are more sensitive to noise disturbance/nuisance than their younger counterparts. The religious affiliation or belongingness plays a vital role in perception of sound being noise or not. Noise emanating from religious institutions may be responsible for sleeplessness among people adjoining the religious institutions and may have other adverse effects on their well-being. Most females stay home during worship hours. It is also realized that most of the religious institutions do not create buffer around their structures.^{xxv}

CONCLUSION

No religion or religious sect can claim to use Loudspeakers and instruments in the sake of Article 25. Also, it is not protected under Article 19(1)(a) of the constitution.^{xxvi} On the contrary, the use of such an instrument without taking permission from the authorities violates the Noise Pollution Rules and Article 21 of other citizens. It is turning out be a reason for the degrading health of people, especially the infants and senior citizens of our country. It is causing various health complications for the people. Therefore, the nuisance and noise

pollution created in the name of religion is not protected under Article 25. *It is a need of the hour to make people aware of it and end this misconception. Use of loudspeakers and other instruments is not an integral part of any religion and therefore, it is not protected under Article 25 nor Article 19(1)(a). Nobody could be forced to listen to what one does not desire to listen.*

ENDNOTES

ⁱ Abhinav Verma, *#WhatLawSays: Is it legal to use loudspeakers in religious places?* HINDUSTAN TIMES (Sept. 1, 2020, 10:04 AM), <https://www.hindustantimes.com/delhi/whatlawsays-is-it-legal-to-use-loudspeakers-in-religious-places/story-wWmUwoQL4KQZndgSzh9O9N.html>.

ⁱⁱ *Navratri will stay noisy, if govt doesn't act*, HINDUSTAN TIMES (Sept. 2, 2020, 11:45 AM), <https://www.hindustantimes.com/mumbai/navratri-will-stay-noisy-if-govt-doesn-t-act/story-wr1tIYWuJg52mAY0rJAo7M.html>.

ⁱⁱⁱ *Afzal Ansari & Ors. v. State of U.P & Ors.*, (2020) SCC OnLine All. 592.

^{iv} Gilles Tarabout, *Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism*, SOUTH ASIA MULTIDISCIPL. ACAD. J. 1, 1 (2018).

^v *Om Birangana Religious Society v. The State & Ors.*, (1996) 2 CALLT 474 HC.

^{vi} *Church of God (Full Gospel) in India v. K.K.R Majestic Colony Welfare Association & Ors.*, (2000) 7 SCC 282.

^{vii} *Id.*

^{viii} *Noise Pollution (V), In re*, (2005) 5 SCC 733.

^{ix} *Ramlila Maidan Incident, in re*, (2012) 5 SCC 1.

^x *Supra* note at 8.

^{xi} *Id.*

^{xii} *Noise Pollution (Regulation and Control) Rules, 2000*, Gazette of India, pt. II sec. 3 (ii) (Feb. 14, 2000).

^{xiii} *Supra* note at 3.

^{xiv} *Supra* note at 12.

^{xv} *Supra* note at 3.

^{xvi} *Id.*

^{xvii} *Supra* note at 5.

^{xviii} *P.A. Jacob v. The Superintendent of Police, Kottayam & Anr.*, (1992) 2 KLT 238.

^{xix} *Public Utilities Commission of the District of Columbia et al. v. Pollak et al.*, 343 U.S. 451, 468 (1952).

^{xx} *Paul Robert Cohen, Appellant, v. State of California*, 403 U.S. 15, 25 (1971).

^{xxi} Professor Gary Housley, *Health effects of environmental noise pollution*, AUSTRALIAN ACADEMY OF SCIENCE (Aug. 31, 2020, 10:04 AM), <https://www.science.org.au/>.

^{xxii} *Burden of disease from environmental noise - Quantification of healthy life years lost in Europe*, WORLD HEALTH ORGANIZATION (Aug. 31, 2020, 11:43 AM),

https://www.who.int/quantifying_ehimpacts/publications/e94888/en/.

^{xxiii} *Id.*

^{xxiv} Albert Kwame Abotsi, *Noise Pollution from Religious Institutions and Its Impact on the Adjoining Land users: A Case Study of Some Churches and Mosques in the Accra Metropolis*, INSTITUTE FOR ENVIRONMENT AND SANITATION STUDIES (Aug. 31, 2020, 12:45 PM), <http://iess.ug.edu.gh/content/2013-iess-noise-pollution-religious-institutions-and-its-impact-adjoining-land-users-case>.

^{xxv} *Id.*

^{xxvi} *Supra* note at 7.