CHAPTER V

ROLE OF JUDICIARY TO COMBAT NOISE POLLUTION

In the post 1978 era, it is evident through various judicial pronouncements especially since the Maneka Gandhi dictum there is remarkably a new judicial outlook, new orientation and new social philosophy whereby 'Supreme Court' started to interpret law according to current ethos, needs and welfare of the community. The judiciary in our country has evolved and formulated workable and balanced principles to reconcile between the varying social and individual interests and identified itself as the reformer promoter and harbinger of social good, common welfare and social justice in terms of our constitutional philosophy of sovereign, socialist, secular, democracy and republic. The effort of the judiciary is to fulfill the directives of the constitution to do justice with the people in the field of social economic and political and to strengthen the concept of 'we the people'.

Regarding the matter of environment it is already discussed that how the judiciary has taken a positive outlook to fight with the menace of pollution. The Supreme Court not only recognized the right to get pollution free and healthy environment as a fundamental right under Art 21 but its approach of making harmonious construction in between the Fundamental Rights and Directive Principles of state Policy compelled the legislative to enact various, environmental legislations on the basis of Art 48 A of the constitution. In many cases the judiciary has been forced to ingress into the fields traditionally reserved for executive and legislative due to their indifferent attitude towards environment problems. The judiciary has given paramount importance to 'ecology' and 'health' and this stand of judiciary has helped to fill the gaps and rectify the flaws and lacuna of the various statutory laws related with
environmental matters. The judiciary not only has taken a very active role to provide relief to the people in ecological matters and by taking stern actions against the polluters but is also performing the educative function by infusing an awareness to save the environment from its further degradation and thus judiciary has evolved a new jurisprudential techniques of 'environmental jurisprudence'\(^1\)

In the case of state of Tamil Nadu Vs Hind Stone\(^2\) the Supreme Court of India has considered the need to conserve and protect the natural resources of nation in wider interest of mankind. The Supreme Court in this case has made observation that rivers, forests and minerals and such other resources constitute the natural wealth. These resources are not to be fritted away or exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. Here the Court had given emphasis on preservation and development of natural resources and to develop an healthy environment.

In the case of Pradeep Krishan Vs Union of India\(^3\) the Supreme Court had observed that the total forest cover is far less than the ideal minimum of one third of the total land in India and it is not possible to afford any further shrinkage in the forest cover. It was held that if one of the reasons for the shrinkage is the entry of villagers and tribal living in and around the sanctuaries and National parks, there can be no doubt that urgent steps must be taken to prevent any destruction and damage to the environment, the flora and fauna and wildlife in those areas. The Court further observed that if the government failed to rehabilitate the tribal and villagers, that should be regarded as failure of the duties on

---

1. AIR 1978 SC
2. AIR 1981 SC 711
3. AIR 1996 SC 2040
the part of the government and it cannot be taken as a plea by the government that this reason led the government to permit entry to the tribal or villagers for collecting Tendu leaves. The Supreme Court had also stated that inertia of the government in this regard cannot be tolerated and within six months state government has to take action, expeditiously, in this regard which can be expected from a government in such matters as enjoined by Article 48A and at the same time keeping in view the duty enshrined in Article 51A(g) of the Constitution.

In the case M.C. Mehta Vs Union of India\(^1\) the Court observed that when statutory authorities do not discharge their duties then the Court has power to issue appropriate directions.

5.1 PIL AND PROTECTION OF ENVIRONMENT :-

The introduction of social Action litigation popularly known as public interest litigation by Supreme Court of India in the constitutional jurisprudence is a major example of Supreme Court’s activism. PIL can be defined as litigation in the interest of that nebulous entity: the public in general. Prior to the 1980’s only the aggrieved party could personally approach before Court to seek remedy for his grievance because of the provision of Article 32(1) which confers right to aggrieved person the right to move the supreme court by appropriate proceedings for the reinforcement of the rights confer erred in part-III of the constitution. However this scenario has been changed gradually from the post emergency period, when the Supreme Court started to innovate new methods and devise new strategies for the purpose of providing access to the justice to large masses of people who are denied their basic human rights and to whom freedom and liberty has no meaning. It is a

---

\(^1\) AIR 1988 SC 1037
process of epistolary jurisdiction of the Supreme Court of India in the constitutional jurisprudence by which the Supreme Court has widened the traditional rule of *locus standi* and has started to entertain litigation from the public spirited, citizens either personally or through letter and now, even the Court can *suo motu* initiate the cases according to the report published in news paper for the sake of the persons who are socially, politically, literally, economically in disadvantaged position and unable to approach to court or to get justice by applying traditional constitutional provisions. Today, through introduction of PIL a vast revolution is taking place in the judicial process. Thus new sociological jurisprudence by way of public interest litigation has been invented by the Court where by law is made as committed to the service of the people, Law is used as vehicle of social transformation and above all social objectives is geared to remove the social disabilities, discrimination and inequalities. Furthermore, public interest cases could be filed without investment of heavy Court fees as required in private Civil Litigation.

PIL in India attributed to the following four procedures.

i) Liberalization of the rule of *locus standi*.

ii) Treating letter as writ petitions.

iii) *Suo-motu* interventions by the Judges

iv) Justice and appointment of commission.

The Full Bench of Honourable Supreme Court on 1st December 1988 issued guidelines to be followed for entertaining letters/ petitions by the Court as Public Interest Litigation. The Full Bench decided that the petitions falling under the following categories alone would ordinarily be entertained as public interest litigation

1) Bonded labour matters;
2) Non payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in Individual cases)

3) Petitions from jails complaining of harassment, for pre-mature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as fundamental right.

4) Neglected children:

5) Petitions against atrocities on women, in particular harassment of bride, bride burning, rape, murder, kidnapping etc;

6) Petitions against police for refusing to register a case harassment by police and death in police custody;

7) Petitions complaining of harassment or torture of villagers by co-villagers or by police to persons belonging to scheduled castes, scheduled tribes and economically backward classes.

8) Petitions from riot victims;

9) Family Pensions, and

10) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques forest and wildlife and another matters of public importance.

It was also decided that if the cases comes under the following category/categories would not be entertained as public interest litigation.

1) Landlord tenant matters

2) Service matter and those/pertaining to pension and gratuity;
CHAPTER V: Role Of Judiciary

3) Complain against various Central/State government departments and Local bodies except if the items come under above-mentioned categories, which would be treated as public interest litigation.

4) Admission to medical and other educational institutors.

5) And, petitions for early hearing of cases pending to High Courts and subordinate Courts.

The Court entertains only those letter as writ petitions where :-

i) The letter is addressed by an aggrieved person or

ii) a public spirited individual or

iii) a social action group for enforcement of the constitutional or the Legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or social or economically disadvantaged position find it difficult to approach the Court for redress.

The judiciary is itself aware with the abuse of PIL by the professional litigant and the persons having privately motivated interests who intend to use the benefit of the liberal local stand rule in spurious causes.

The Apex Court itself has framed certain guidelines to prevent the abuse of PIL. Those are :-

i) The petitioner who is approaching before the court is acting bona fide.

ii) Not having any interest of gaining private profit.

iii) Should not have any political or other oblique considerations.
On the basis of these guidelines the court accordingly dismissed the petition in the case of Janata Dal vs H.S. Choudhury\(^1\) and Simranjit Singh Mann vs union of India\(^2\). So it can be said that our judiciary is well aware with this growing malpractices and innovate the 'doctrine of Justiciability' to judge the merit of a claim.

Finally in the case of Ranauk International vs IVR Construction and other\(^3\), the Supreme Court held that if a project is stayed at the instance of an individual or any organisation and litigating under public interest by a stay order and subsequently if their petitions would be dismissed subsequently due to the lack of reasons then they will remain liable to pay damages both for the delay and cost escalation resulting from such delay.

**5.2 SOME IMPORTANT DECISIONS IN PUBLIC INTEREST LITIGATION REGARDING ENVIRONMENTAL MATTER :-**

In the case M. C. Mehta vs Union of India and other\(^4\), the writ petition was filed by Shri M. C. Mehta a public spirited lawyer regarding pollution caused to the Tajmahal in Agra particularly due to the iron foundries, bricks kilns, refractory units, auto-mobiles ferro-alloys industries, rubber processing, lime processing engineering, chemical industries etc. situated in Agra. The petitioner also alleged that the distant sources of pollution were the Mathura Refinery and Ferozabad bangles and glass industries; which also affecting the Taj Mahal. It was also alleged that the industrial and refinery emission from brick kilns, vehicular traffic and generator sets were primarily responsible for polluting the ambient air in and around Taj Trapezium

---

1. AIR 1993 SC 892
2. (1992) 4 SCC
3. (1992) 4 SCC
4. 6 W.P. (C) No - 13381
Zone (TTZ) as identified by the Central Pollution Control Board. The petitioner in this context had referred the Reports on "Environmental Impact of Mathura Refiner", a report made by the Varadharajan Committee and published by the Government in the year 1978, "Inventory and Assessment of Pollution Emission: In and Around Agra-Mathura Region (Abridged)" a report made by Central Pollution Control Board and "Over View Report" made by the National Environmental Engineering Research Institute (NEERI) published in the year 1990. On the direction of the Honourable Supreme Court, the NEERI and the Ministry of Environment and Forests had undertaken an extensive study for re-defining the TTZ (Taz Trapezium Zone) and re-alienating the area management environmental plan.

The NEERI in its reports had observed that the industries in the TTZ were the main source of air pollution in the area and suggested the shifting of the air polluting industries from the TTZ. After going through the four reports submitted by NEERI, to reports from Varadarajan and several reports by the Central Pollution Control Board and U. P. Board, Mr. Justice Kuldip Singh, who is known as green Judge for his decision on pollution has delivered the Judgment of the court, on behalf of the court, that is the 292 polluting industries locally operating in the area are the main sources of pollution and directed them to change over within fixed time schedule to natural gas as industrial fuel and if they could not do so then they must stop functioning beyond 31st December 1997 and be reallocated alternative plots in the Industrial estate outside TTZ. It was also held that the closure by 31st December, 1997 is unconditional and applicable to both new and old units and responsibility was entrusted upon The Deputy Commissioner, Agra and the Superintendent of Police to effect the closure of the industries by
that date. The Honorable Supreme Court had also taken into its consideration about the plight of the employees engaged in these industries and in order to protect their rights and benefits following directions were passed:

a) The workmen shall have continuity of employment in the relocated industries with same terms and conditions.

b) The period between the closure and its restart shall be treated as active employment and shall be paid to their full wages.

c) The workmen who agree to shift with the industry shall be given one year wages as shifting bonus to hold them settle at the new location. The said bonus shall be paid before January 31, 1998.

d) The workmen who opt for closure shall be deemed to have been retrenched by 31st May, 1997 and shall be paid compensation in terms of sec. 25 F(b) of Industrial Dispute Act. These workmen shall also be paid in addition six years wages as additional compensation.

e) The compensation table to the workmen shall be paid in addition.

f) The gratuity amount payable to any workman shall be paid in addition.

It is evidenced from the above judgment that the Honourable Supreme Court has taken decision into environment matter with human face.

One Mahajan Committee was constituted by the order of the Court dated 05.02.1996. The Mahajan Committee was consisted of Shri Krishan
Mahajan, Advocate and two senior scientist of the Central Pollution Control Board. The Honourable Supreme Court directed the Mahajan Committee to inspect the progress of the green belt developed around the Taj Mahal. The Honourable Supreme Court on 30th August 1996 and 3rd December, 1996 directed the Ministry of Environmental & Forests, Government of India for monitoring and maintenance of the trees planted in the green belt. The Officials of the Central Pollution Control Board were also directed for inspection of the Green Belt area in every three months.

Again by Virtue of the direction, issued by the Supreme Court on 13th September 2000 the Central Pollution Control Board inspected the foundry Nagar Industrial Area, Agra and the premises of the Taj and submitted its report before the court. On 7th November 2000. Accepting the recommendations of the Central Board the Honourable Court has directed that the four Ambient Air Quality Monitoring stations be installed in Agra region and these stations are to be run continuously for one year all the seven days in week. These air quality monitoring stations are to run by the Central Pollution Control Board and monitoring report of these stations be submitted in the court every month. The Supreme Court also directed that the full cost towards the hardware for the Monitoring Stations and hardware for Central Laboratory would be provided by the Mission Management Board functioning under the Ministry of Environment, Government of U. P. and the rest of the amount of operational cost would be beard by the Central Government and accordingly in the month of January, 2002, the Central Board had established the said four Ambient Air Quality Monitoring Stations. Apart from those some matters are still in the consideration of the Honourable Supreme Court which are as follows :-
CHAPTER V: Role Of Judiciary

i) Industries located in Agra including foundry units.

ii) Compliance of direction of the Honourable Supreme Court by Mission Management Board.

iii) Traffic management & encroachment within the 500 metre zone of the Taj Mahal.

iv) Agra Heritage fund.

v) Whether Taj Mahal would be allowed to open in night or not.

vi) Unauthorised construction within 100 metre from the southern gate of the Taj Mahal.

vii) Supply of gas to the industries located in Firozabad.

viii) Brick kilns located 20 KM away from Taj Mahal or any other significant monument in the TTZ area including Bharatpur Bird Sanctuary.

ix) Promotion of Non-conversional Energy Source and

x) Security of Taj Mahal.

In the case Indian Council for Enviro Legal Action vs Union of India1 it was held by Supreme Court that if by the action of private corporate bodies the fundamental right of a person is breached the court would not accept the plea that as the private body is not a 'state' within the meaning of Article 12 and therefore action cannot be taken against it. Actually in this case the writ petition was filed by an NGO on behalf of the people living in the vicinity of chemical industrial plants located in a village Bichhri in district Udaypur, Rajasthan. The problem started from the year 1987 & when the Hindustan Agro Ltd. Started producing chemicals like Oleum (concentrated form of Sulphuric acid) and single

1. (1996) 3 SCC 212
super phosphate. The real problem began when a sister concern the Silver Chemical commenced production of H-acid, large quantity of highly toxic effluents and iron and gypsum sludge caused damage to the land. Another industry styled M/S Jyoti Chemical was also established to produce H-acid besides other chemicals. All these chemical industries started to produce H-acid in the said village. It was estimated that about 2400-2500 tones of highly toxic sludge was produced while producing 375 tones of H-acid. The leachate from toxic sludge percolated deep into the ground polluting the aquifers and subterranean supply of water. The water in the wells and the stream turned dark and dirty and became unfit not only for human consumption, but also for cattle and irrigation. Due to the reason, death and disaster in the village and surrounding areas were reported.

The Indian council for Enviro Legal Action filed this writ petition with the prayer to the court for appropriate remedial action. On direction of the Honourable Supreme Court the Rajasthan Pollution Control Board filled the affidavit in which it stated that (i) the Hindustan Agra Chemicals Limited obtained NOC from the Board for manufacturing sulphuric acid and alumina sulphate. But this unit change its products without clearance from the Board and started manufacturing Oleum and Single Super Phosphate (SSP). The consent was refused and directions were issued accordingly to close down the unit and (ii) the silver chemical stated to be manufacturing of H-acid without obtaining NOC from the Board. The waste generated from the manufacture of H-acid was highly acidic and contained very high concentration of dissolved solids along with several other pollutants. The unit was closed in 1989 as the pray for the consent was ruled out by the Pollution Control Board and (iii) the Jyoti Chemicals had applied again for NOC for producing
ferric alum and oleum in 1988 for obtaining no consent for producing H-acid which was ruled out and the industry was closed in 1989. The State Pollution Control Board also had given its opinion that the sludge lying in the open in the premises of these industries ought to be disposed of in accordance with the provisions of the Hazardous Waste (Management and Handling) Rules, 1989 notified under the Environment (Protection) Act, 1986. The State Government of Rajasthan Contended that the State Government was aware of the pollution being caused by these industries and that is why the State Government had initiated action through Rajasthan Pollution Control Board. The Ministry of Environment and Forest of Government of India Stated that though it had given letter Intent to M/S Silver Chemical but it never applied for conversion of the letter of intent into Industrial License and which was an offence under the Industries (Development and Regulation) Act 1951. It was also contended that M/S Jyoti chemicals in no occasion approach before the Government of India for letter of intent.

The report of the centre for science and Environment was also submitted by the Ministry of Environment and Forest, which had conducted an inspection in the village Bichhri. In its report it was stated that as the pollutants were non compliant in nature it was very difficult to treat them. It was also reported that about 60 wells appeared to have been significantly polluted. The aquifer was showing sign of pollution. After considering the report of all these said authorities and Boards on 11th December, 1989 the Honourable Court requested the National Environment Engineering Research Institute (NEERI) to study the situation in and around village Bichhri and submit their report. After going through the depth of the matter NEERI submitted its report and
suggested both Short term and Long term measures are required to the taken in the area. The court considered the situation that might be the production of H-acid is stopped but large quantity of highly dangerous sludge which had accumulated in the area would cause serious environmental problem, unless the safe disposal of these waste effluents will be made. Accordingly, the Honourable Court had issued direction to the Rajesthan Pollution Control to make necessary arrangement for the safe disposal of the waste pollutant as per the procedure provided in the Hazardous waste (Management and Handling) Rules, 1989 and directed the polluters to bear the expenses.

The Court passed its order on 13th February, 1996 and in its order stated, "they are in the view that if an enterprise which posses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, it is an absolute and non delegable duty to the community to ensure that no harm to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken. It is therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident, and such liability is not subject to any of the exceptions as laid down in tortious principles of Strict Liability under the rule laid down in Rylands vs Flecher. The law Laid down in the case of Oleum Gas lack case (M.C. Mehta vs UOI & others) is also applicable in the present case and the industries (Respondent No.4 to 8) are absolutely liable to compensate for the harm caused by them to the Soil and to the ground water and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area which is about 350 hectares. The
polluter pays principle demands that the financial cost of preventing or remedying damage caused by pollution should lie with the industries which caused the pollution." It was also ordered that if the expenditure incurred by the Central Government to remove sludge's by the said industries than the factories, plant, machinery and other immovable assets of these industries be attached. So far as the claim for damages for the loss suffered by the villages was concerned, it was opened to them or any organization on their behalf to file suit in appropriate Civil Court”. The Honourable Court also had directed the central Government to consider to treat the chemical industries as a category apart and their functioning should specially be monitored and time-to-time necessary direction should be given under sections 3 & 5 of the Environment (Protection) Act, 1986 to save the environment from further degradation. The Honourable Court had also given emphasis on the need for Creating environment Courts and also had directed the said industries to pay 50,000 Rs to the petitioner for the expenses what he bared personally for fighting the legal battle.

Another historical judgment is given by the court in the landmark case M.C. Mehta vs union of India¹ where the Supreme Court has directed the avocations who are engaged in manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workman and people in its neighborhood, to take all necessary measure before reopening the plant. Actually in this Case the petitioner Shri M.C. Metha filled writ petition in the year 1985 under Article 32 of the Constitution,. Seeking a directions from the Honourable Court to close various units of Shriram industries as they used to manufacture of caustic chlorine including its by products which were hazardous in

¹. (1986) 2 SCC 176
nature. While the writ petition was pending there was a leak of Oleum Gas from one of the Unit of SFFI (Shriram Food Fertilizer Industries) and number of applications by the were placed by the Delhi Legal Aid & Advice Board and Delhi Bar Association for compensation to the victims before the Honourable Supreme Court under Article 21 & 32.

The Honourable Court observed that the industry was located in an 'air pollution control area' and also subjected to regulation of the Air (Prevention and Control of Pollution) Act, 1981 and some of the Units were set up in thickly populated colonies. It was considered by the court that as the chlorine gas is dangerous to the life and health, how it will be proved fatal to the life of the people, if any how the gas would escape either from the storage tank or from the filled cylinders or from any other point in the course of production. This grim situation led the Honourable Court to consider the Rule in Ryland vs Fletcher once again. The principle of strict liability is evolved in this case in the year 1866 and it provided, "a person who for his own purposes bring on to his land and collect and keeps there anything likely to do mischief if it escaped must keep it at his perils if he failed to do so, was prima facie liable for the damages".

However this rules applies only to non-natural user of the land where the escape was due to an act of God or an act of stranger or by the default of the person injured, this rule will never be applied. The Honourable Court observed that an enterprise which was engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm caused to anyone on account of hazardous or inherently dangerous nature of the activity
which it had undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standard of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harms and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

Thus for a first time apex court include a new dimension of liability in tort and rejected to follow the principle of strict liability of Ryland vs Fletcher in such type of situations. In this case the Honourable Court had also observed the scope of the applications of compensation which are as follows, "These applications for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the constitution and while dealing with such applications, we cannot adopt a hyper technical approach which would defeat the ends of Justice. This court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring on action for vindication of the fundamental or other legal right of such individuals and this can be done not only for filing a regular writ petition but also by addressing a letter to the court." This view of the court enable it to entertain this writ petition. Regarding the compensation the Honourable Court observed that the measure of compensation be co-related to the magnitude and capacity of the enterprises because such compensation must have a deterrent effect. The Honourable Court further observed and accordingly had given order that
it would not be justified in setting up a special machinery for investigation of the claims for compensation made by the victims of oleum gas leak. Therefore the Honourable Court had directed the Delhi legal aid and Advice Board to file actions on behalf of the oleum gas victims before the appropriate court for compensation and Delhi Administration was directed to provide necessary fund to the Delhi Legal Aid and Advice Board for the above purposes. The Honourable Court also had directed that it would nominate one or more judges as may be necessary for the purpose of trying such actions so that they might be expeditiously disposed of. Regarding the scope of Article 32 the Supreme Court has observed that, "As regard to the first question as to what is the scope and ambit of the jurisdiction of this court under Article 32, the Honourable Court observed that Article 32 does not merely confer power on this court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this court to protect the fundamental rights of the people particularly in the case of poor and disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

On the status of condition of sanitation in the city, fishing activities and suggested short term and long term recommendations. The Honourable Supreme Court after examining the matter on 09.04.1999 directed that the area between Manik Chowk and Sardar Vallabh Bhai Patel Road should be treated as "Walking Plaza" and no vehicular traffic would be allowed on this road subject to the special permission of the S. P. (Traffic) or the Collector of the District for urgent Governmental works. No hawkers would also be allowed in this area and no first drying activity would be carried out in and around on area of three kilometers from Kirti Mandir. The state of Gujrat and Municipality of Porebandar
was being asked by the Supreme Court to take special care regarding sewage system and to submit a report in this regard before it. Having pleased with the afterwards steps of the state as well as said Municipality the Supreme Court disposed off the petition.

In the case M. C. Mehta vs Union of India, popularly known as the 'Ganga Pollution' case in which apex court given notice by publishing the gist of the petition in newspaper to all the owner of the industries and municipal corporation and councils having jurisdiction over the areas through which the river Ganga flow sand also made union Government and Chairman of the Central Pollution Control Board, U. P. State Pollution Control Board a party to this case and observed that when statutory authority are not performing their duty to curb the water pollution of river Ganga the court has the power to issue direction to keep the river Ganga free from the pollution. In this case K. N. Singh J. stated that closure of some industries may bring unemployment, loss of revenue but health and ecology has also have greater importance to the people. It had directed concern industries to establish primary treatment plants without considering financial capacity of the industrialists. This case marks a new trend to combat water pollution.

In Dr. Kiran Bedi vs Union of India & others Dr. Kiran Bedi, an IAS officer filed a petition in public interest for the protection of the Monument of Porebandar, the birthplace of the Father of the Nation. The Honourable Supreme Court accepted the petition on 16.10.1988 and directed the Central Pollution Control Board to submit a report about the conditions prevailing in and around the memorial built in memory of the

1. (1988) 1 SCC 471
2. Writ Petition (Civil) No. 16/98
Father of the Nation at Porebandar. Accordingly the Central Board submitted its inspection report.

In the case M. C. Mehta vs union of India\(^1\), the following Order of the Court was delivered:

1) Article 39 (e), 47 and 48-A by themselves and collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment. It was by reason of the lack of effort on the part of the enforcement agencies, notwithstanding adequate laws being in place, that this Court was been concerned with the state of air pollution in the capital of this country. Lack of concern or effort on the part of various Governmental agencies had resulted in spiraling pollution levels. The quality of air was steadily decreasing and no effective steps were being taken by the administration in this behalf.

2) It was by reason of the failure to the discharge its constitutional obligations, and with a view to protect the health of the present and future generations, that this Court, for the first time, on 23\(^{rd}\) September, 1986, directed the Delhi Administration to file an affidavit specifying steps taken by it for controlling pollution emission of smoke, noise, etc. from vehicles playing in Delhi.

3) The concern of this Court in passing various orders since 1986 has only been one, namely, to protect the health of the people of Delhi. It is only with this objective in mind that directions had been issued in an effort to persuade the Governmental authorities to take such steps as would reduce the air pollution. It is as a

\(^{1}\) W.P. (Civil) No. 13029 of 1985 and decided on 5\(^{th}\) April, 2002
result of intervention by this Court that the following measures were taken in controlling pollution to some extent -

a. lowering of sulphur content in diesel, first to 0.50 % and then to 0.05 %;

b. ensuring supply of only lead free petrol;

c. requiring the fitting of catalytic converters;

d. directing the supply of pre-mix 2T oil for lubrication of engines of two-wheelers and three-wheelers;

e. directing the phasing out of grossly pollution old vehicles;

f. directing the lowering of the benzene content in petrol; and

g. ensuring that new vehicles, petrol and diesel, meet euro-II standards by September, 2000.

It was during the course of these proceedings that the Bhure Lal Committee was established under Section 3 of the Environment (Protection) Act, 1986.

4) The Environment Pollution (Prevention and Control) Authority is a statutory authority constituted under Section 3 of the Environment (Protection) Act, 1986, and its directions are final and binding on all persons and organization concern. This Court in Sector 14 Residents' Welfare Association and Ors has reiterated this position. v. State of Delhi and Ors. It is this authority which had directed the phasing out of non-CNG buses. It is the Bhure Lal Committee, which had also recommended the conversion to CNG mode and issued directions that non-CNG buses should be phased out.

1. (1999) 1 SCC 161
5) It is the report of the Bhure Lal Committee, which was accepted, and orders were passed by this Court on 28th July, 1998, fixing the time limit within which the switch-over to CNG was to take place. It may be mentioned here that the need for finding and alternative fuel to diesel had been drawing the attention of this Court for quite sometime. This is evident from the order dated 21st October, 1994, in which it was observed as follows:

"On an earlier occasion when these matters came up before this Court it was suggested that to begin with Government vehicles and public undertaking vehicles including public transport vehicles could be equipped with CNG cylinders with necessary modification in the vehicles to avoid pollution which is hazardous to the health of the people living in highly polluted cities like Delhi and the other metros in country."

6) Again, in the order dated 28th March, 1995, and 9th February, 1996 long before the receipt of the Bhure Lal Committee report, there is reference to conversion of Governments vehicles to CNG, as well as to the installation of CNG stations and kits. It is unfortunate that the efforts of the Governmental authorities have not kept pace with the orders passed by this Court. For more than one year, under one pretext or the other, first the NTC of Delhi and than the Union of India have been seeking extension of time for conversion of commercial vehicles to CNG? While the anxiety of the Delhi Government, to give it the benefit of doubt, was to see that bus services in this city were not disrupted which was the reason that it had sought extensions of the time limit, the response of the Union of India in this regard is baffling to say the least.
7) With a view that the disruption in bus services does not take place and unnecessary hardship is not caused, this Court has been extending the time with regard to the conversion of commercial vehicles. Time was first extended to 30th September 2001, and then to 31st January 2002. It was during the period January, 2001, to February, 2002, that action has been taken by the Union of India, which leaves us with no doubt that its intention, clearly, is to frustrate the orders passed by this Court with regard to conversion of commercial vehicles to CNG. The manner in which it has sought to achieve this object is to try and discredit CNG as the proper fuel and, secondly, to represent to this Court that CNG is in short supply and, thirdly, delay the setting up of adequate dispensing stations.

8) In 2001, the Union of India hurriedly set up a Committee headed by Mr. R. A. Mashelkar to give a report with regard to vehicular pollution. It was surprising that since 1986, the Union of India had not thought of setting up such a Committee until after 31st January, 2001, when an order was passed in which the apathy on the part of the Government in carrying out the orders of this Court was taken note of, and the authorities were required to comply with the orders passed. The composition of the Mashelkar Committee was such that none of its members was either a doctor, or an expert in public health. The said Committee submitted its report, which does not show any serious concern in protecting the health of the people. The Committee recommended that emission norms should be held down, and that the choice of the fuel should be left to the users. The Committee seemed to have overlooked the fact that such norms had been in place for long time with
hardly any compliance thereof. For instance, the emissions norms with regard to the quality of air and water have been statutorily provided for but despite this, prior to 1996, Delhi was the third most polluted city in the world. It will not be out of place to mention that there are various emission and other norms and regulations, which are in place, but are invariably breached. The existence of building regulations have not been able to control rampant unauthorized and illegal construction, just as the existence of norms relating to effluents have not prevented pollution. Yamuna is no more a holy river, it has been relegated to a sewage drain. Norms regarding quality of water and the various orders passed by this Court in another case have not been successful in adding any oxygen in the water, the BOD label being zero. Therefore it is naive of the Mashelkar Committee to expect that merely laying down fresh emission norms will be effective or sufficient to check or control vehicular pollution.

9) One of the principles underlying environmental law is that of sustainable development. This principle requires such development to take place, which is ecologically sustainable. The two essential features of sustainable development are:

a. the precautionary principle and

b. the polluter pays principle.

10) The "precautionary principle" was elucidated thus by this Court in Vellore Citizens' Welfare Forum v. Union of India and Ors,¹ inter alia, as follows:

¹. (1996) 5 SCC 64
(1) The State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(3) The "onus of proof" is on the actor or the developer to show that his action is environmentally benign.

(4) It cannot be gainsaid that permission to use automobiles has environmental implication, and thus any "auto policy" framed by the Government must, therefore, of necessity conform to the Constitutional principles as well as overriding statutory duties cast upon the Government under the EPA.

(5) The "auto policy" must, therefore,
   a. Focus upon measures to "Anticipate, prevent and attack" the cause of environmental degradation in this field.
   b. In the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental.
   c. Adopt the "precautionary principle" and thereby ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful.
   d. Make informed recommendations, which balance the needs of transportation with the need to protect the environment and reverse the large-scale degradation that has resulted
over the years, priority being given to the environment over economic issues.

11) Norms for emission and norms for the fuel have existed for over the last two decades and the state of the environment is dismal despite the existence of these norms. The emission norms stipulated by the Government have failed to check air pollution, which has grown to dangerous levels across the country. Therefore, to recommend that the role of the Government be limited to specifying norms is a clear abdication of the constitutional and statutory duty cast upon the Government to protect and preserve the environment, and is in the teeth of the "precautionary principle".

12) The recommendation made by the Bhure Lal Committee and the directions issued in 1998 have not been challenged by the Union of India. The directions issued by the Bhure Lal Committee are statutory and continue to be in force. It is not, therefore, open to the Union of India to seek variation of the same without any justifiable reason. Prior to the filing of its affidavit of 26th April, 2001, the Union of India never opposed the changeover to CNG. Its application being I. A. No. 116 for variation was dismissed on 27th April, 2001. In the order dated 17th September, 2001, this Court observed, while dealing with another application being I. A. No. 142 in which prayer (d) was that the bus operator should have an option of using either CNG or diesel with 0.05 sulphur content, that "we do not see any justification to grant prayer (d) at this stage." Mr. Rohtagi, Addl. Solicitor General submitted that the use of the expression "as this stage" meant that such a request could be met or made at a subsequent point of time and that is
why the present application filed on 5th February, 2002 for modification had been filed by the Union of India. The said plea of Mr. Rohtagi cannot be accepted and is not in accordance with the orders passed by this Court. As already noticed, the union of India I. A. No. 116 first made a prayer of this effect. In the order of 27th April, 2001, it was observed that the Court did not think that any modification of its order dated 26th March, 2001 was required. The application was disposed of and the request for modification was not accepted. While disposing of the application I. A. No. 142 it was first observed in the order as follows:

"Our order dated 28.07.1998 with regard to conversion of entire city bus fleet (DTC and private) to single fuel mode of CNG (direction 'G') does not require any modification or change. That direction stands."

13) When in this order, it was observed that there was no justification to grant prayer;

"at this stage" it only meant that the question of considering such a request did not arise specially when similar plea for modification had been rejected earlier. The expression "at this stage" only meant at this late stage. The use of the expression "at this stage" cannot be interpreted as permitting the Union of India to once again ask for modification of the Court's order with regard to conversion of the city bus fleet to CNG mode.

14) The plea of the Government that CNG is in short supply, and that it is unable to supply adequate quantity is incorrect, and this is clearly a deliberate attempt to frustrate the orders passed by this
CHAPTER V: Role Of Judiciary

Court. Particulars filed in Court show that as today no CNG is being imported. The indigenous produce is far in excess of what is supplied to the transport sector. It is only a small fraction of the CNG produced in India which is earmarked for non-industrial use. Overwhelming quantity is allocated to industries, including the power sector.

15) That there is no shortage of CNG is also evident from the fact that even during the pendency of these proceedings, while on the one hand it was being represented to this Court and the Mashelkar Committee that CNG was in short supply, there was an increase in the allocation of the CNG to industries. Even when CNG was not being supplied to the Pragati Power Station in Delhi, as the same has not been commissioned, the CNG earmarked for the power unit instead of being allocated to the transport sector, was diverted to the industries in the neighbourhood of Delhi.

16) If there is a short supply of an essential commodity, then the priority must be of public health, as opposed to the health of the balance sheet of a private company. To enable industries to cut their losses, or make more profit at the cost of public health, is not a sign of good governance, and this is contrary to the constitutional mandate of Articles 39 (e), 47 and 48-A.

17) While the industries get natural gas at the rate of about Rs. 3.55 per KG, a commercial vehicle owner in Delhi has to pay about Rs. 13.11 per KG, which is four times more than what the industry pays. It was contended by Mr. Rohtagi that natural gas is supplied to the IGL at the same price at which it is supplied to the industries. The argument conveniently overlooks the fact that IGL is a Government company and, therefore, the sale price which the
Government and its company gets on sale of CNG in the transport sector is at least four times more than what it gets from the industries.

18) It is indeed surprising that, ostensibly, with a view to provide more CNG to the transport sector in Delhi, the allotment of CNG to Maruti Udyog Limited (MUL) has been sought to be cancelled. Normally it would have been surprising that if there is shortage of an essential, commodity, then the supply or the sale to the public sector undertaking would be cut, but here, not only is the supply to the PSU being cut, but also at the same time, supply to at least two big business houses has been increased.

19) It would, under the circumstances, not be incorrect to presume that the proposal to cut supply of CNG to MUL was for some oblique purpose. Why should the Government, which is proposing to disinvest its share in MUL, take the action of cutting supply of CNG, which would result in increasing its expenses and decreasing its value? It is not as if there has been a prorate cut of all industrial units in and around Delhi, including MUL, with a view to increase supply to the transport sector. The proposed cut appears to be nothing more than an attempt to punish MUL because its Managing Director is a member of the Bhure Lal Committee, which had recommended CNG and, therefore, the Managing Director and this company must suffer. It is clear that there is a desire to benefit private industries at the cost of public health and the public exchequer. A major portion of the CNG goes to industries, and the Government and its undertakings get less than what it would realize from supplying CNG to the transport sector. Such economics is baffling, to say the least.
20) Not only is there no shortage of CNG as far as the transport sector is concerned, but even if there be such a shortage, if crude oil can be imported and supplied to the refiners for manufacture of petrol and diesel, there is no reason why CNG, if need be, cannot be imported as it ensures less pollution.

21) During the course of arguments, literature was filed in Court giving data from cities all over the world co-relates increased air pollution with increase in cardiovascular and respiratory diseases and also shows the carcinogenic nature of Respirable Particulate Matter (RSPN)-PM-10 (i.e. matter less than 10 microns in size). The scientific studies indicate that air pollution leads to considerable levels of mortality and morbidity. Fine particulate matter, or respirable matter (RSPM)-PM-10 (i.e. matter less than microns in size)-is particularly dangerous. The Journal of American Medical Association (JAMA) has published in its recent issue the findings of a study involving over 500,000 people conducted over 16 years, in different cities of the US. The researchers find that fine particle related pollution leads to lung cancer and cardiopulmonary mortality. Their research indicates that with an increase of every 10 microgram per cum (ug/cum) of fine particles, the risk of lung cancer increases by 8 per cent.

22) The USEPA has mandated the annual average levels of PM 2.5 particles in the air should not exceed 15 ug/cum. The Indian annual national average standard for PC-10 is 60 ug/cum, but most cities, including Delhi register PM-10 levels above 150-200 ug/cum on an annual basis.

23) A study conducted with regard to children in Bangalore show that the incidents of asthma in percentage of children rose from 9 % in
1979 to 29.5 % in 1999, thereby corresponding increase in vehicles from 1.46 lacs in 1979 to 12.23 lacs in 1999. Similarly, a study by the Chittaranjan Cancer Institute and Environmental Biology Laboratory of the Department of Zoology of Kolkata University done between November, 1997, and May, 1999, found that about 43 % of the children in Kolkata are suffering from respiratory disorders compared to 14 % among the rural children. Alarmingly 94-96 % of the children were found producing sputum which would usually be reflective of habitual smokers though only 5.5 % of the children were found to be smoking and that too occasional. As per the study reflected in the Indian Journal of Medical Research July, 2000, the culprit for the aforesaid was pollution in the ambient air.

24) According to an estimate by the World Bank study using 1992 data, the annual health cost to India was up to about Rs. 5,550 crores due to ambient air pollution. Out of this, the health cost of air pollution in Delhi alone was found to be about Rs. 1000 crores.

25) The increase in respiratory diseases especially amongst the children should normally be cause of concern for any responsible Government. The precautionary principle enshrined in the concept of sustainable development would have expected the Government and the health authorities to take appropriate action and arrest the air pollution. However, children do not agitate or hold rallies and, therefore, their sound is not heard and the only concern of the Government now appears to be is to protect the financial health of the polluters, including the oil companies who
by present international desirable standards produce low quality petrol and diesel at the cost of public health.

26) The statistics show that the continuing air pollution is having a more devastating effect on the people, than what was caused by the Bhopal tragedy. In that case, the nation, including the Union of India, was rightly agitated and sought action and compensation from the multinational company, who was held to be responsible for the same. Here, in the case of CNG, the shoe is on the other foot because the Government is not facilitating measures for clean air and water including the supply of CNG or any other clean unadulterated fuel. It is due to the lack of proper concern on the part of the governmental authorities that people are suffering from respiratory and other diseases. The Bhopal gas tragedy was a one time event which, hopefully, will not be repeated, but here, with not enough concern or action being undertaken by the Union of India, far greater tragedies in the form of degradation of public health are taking place every day.

27) Under these circumstances, it becomes the duty of this Court to direct such steps being taken as are necessary for cleaning the air so that the future generations do not suffer from ill health.

28) As in the past, it is imperative, while reiterating the order of 28th July, 1998, to issue further directions in an attempt to improve public health by decreasing air pollution. We are conscious of the fact that vehicular pollution is only one of the causes of air pollution but statistics show that, at least in the metropolitan towns, this is the major source of pollution. In the September, 2001, issue of 'PARIVESH' a magazine published by the Central Pollution Control Board relating to air pollution and human
health, dealing with diesel exhausted particles and its health effect, it was started at page 34 of the said issue as follows:

"The popularity of the diesel engine in heavy duty applications in trucking, rail road, marine transport, DG sets and construction industry is due to both its fuel efficiency and long service relative to the gasoline engine. Compared with gasoline engine, diesel emissions are lower in carbon monoxide (CO), hydrocarbon (HC) and carbon dioxide (CO₂), but higher in oxides of nitrogen (NOₓ) and particulate matter (PM). Diesel exhaust is a complex mixture of both particulate and gaseous phase. Diesel exhaust has particulate with mass median diameter of 0.05 to 1.00 micrometer, a size rendering them easily respirable and capable of depositing in the airways and alveoli. The particles consist of a carbonaceous core with a large surface area to which various hydrocarbons are absorbed, including carcinogenic polycyclic aromatic hydrocarbons (PAH) and Nitro-PAHs that have elicited the most concern with respect to human health. The gaseous phase contains various products of combustion and hydrocarbons including some of the PAHs present in the particle phase. Once emitted, components of diesel exhaust undergo atmospheric transformation in ways that may be relevant to human health. For example, Nitro-PAHs created by the reaction of directly emitted PAHs with hydroxyl radicals in the atmosphere can be more potent mutagens and carcinogens and more bio-available than their precursors. A study undertaken by a Swedish Consultancy, Ecotraffic (Peter Ahivik and Ake Branberg, 1999) show that the cancer potency of diesel vehicles is more than two times than that of petrol vehicles in India. But if only the most harmful of the
exhaust emissions, that is particulate emission is considered, the
carcinogenic effect of one new diesel car is equivalent to 24 petrol
cars and 84 new CNG cars on the road."

29) In the same issue, particulars are given with regard to major air
pollution related diseases in India which are as follows:

"(1) ACUTE RESPIRATORY DISEASE: 12% of Deaths; 13% of NBD.
   Largest fraction in the world.
   Indian ARI in children alone under 5 is responsible for more
   than 2% of entire GBD.

(2) CHRONIC OBSTRUCTIVE PULMONARY DISEASE (COPD): 1.5 % of Deaths; 0.9 % of NBD

(3) LUNG CANCER 0.4 % of deaths; 0.1 % NBD
(4) ASTHMA 0.2 % of deaths; 0.5 % of NBD
(5) TUBERCULOSIS 8 % of deaths; 5 % of NBD;
   Largest in the world
(6) PERINATAL 6 % of deaths; 7.5 % of NBD,
   Largest in the world
(7) CARDIO VASCULAR DISEASE 17 % of deaths; 5 % of NBD
(8) BLINDNESS 0 % of deaths; 1 % of NBD;
   Largest in the world. NBD / GBD
: National / Global Burden of Disease"
30) From the aforesaid extracts from the publication of the Central Pollution Control Board, it is evident that there was need to control air pollution, and one of the measures was to reduce the use of diesel. It was with this object in view that the Bhure Lal Committee recommended the use of CNG, which was accepted by all the parties including the Union Of India when orders were passed that effect in July, 1998.

31) It was submitted on behalf of the Union of India that diesel and CNG are not materially different in the matter of air pollution and instead of 100% switchover to CNG if there was a mix of CNG and diesel buses of equal proportion the difference would only be of 2% in the pollution levels.

32) We do not find any valid basis for the aforesaid submission. Data from the Automotive Research Association of India, Pune shows that the pollution potential emissions from CNG is far less than even the Euro-IV standards. This is evident from the following table compiled on the basis of the said data.

<table>
<thead>
<tr>
<th>Table - 39</th>
</tr>
</thead>
</table>

**Comparison of CNG Certified Test Data from Automotive Research Association Of India (ARAI) with Emissions Norms For Buses**

<table>
<thead>
<tr>
<th>Sulfur level in diesel</th>
<th>Hydrocarbon</th>
<th>Carbonmonoxide</th>
<th>Nitrogenoxide</th>
<th>Particulate matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992 standards¹</td>
<td>3.5</td>
<td>14.4</td>
<td>18</td>
<td>No standard</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1996 standards(^1)</th>
<th>2.4</th>
<th>11.2</th>
<th>14.4</th>
<th>No standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bharat Stage(^1) April 2000</td>
<td></td>
<td>1.23</td>
<td>4.9</td>
<td>9</td>
</tr>
<tr>
<td>Bharat Stage II (\text{(EURO-2 standards)}) October 2001(^2)</td>
<td>500 ppm (0.05%)</td>
<td>4.0</td>
<td>7</td>
<td>0.15</td>
</tr>
<tr>
<td>EURO-3 standards(^3)</td>
<td>350 ppm (0.035%)</td>
<td>0.66</td>
<td>2.1</td>
<td>5</td>
</tr>
<tr>
<td>EURO-4 standards(^3)</td>
<td>50-10 ppm (0.005-0.001%)</td>
<td>0.46</td>
<td>1.5</td>
<td>3.5</td>
</tr>
<tr>
<td>Ashok Leyland CNG bus(^4)</td>
<td>Nil</td>
<td>0.04*</td>
<td>2.92</td>
<td>2.91</td>
</tr>
<tr>
<td>Telco CNG bus(^5)</td>
<td>Nil</td>
<td>0.25*</td>
<td>1.68</td>
<td>3.42</td>
</tr>
</tbody>
</table>

**Note:**
* Non-Methane Hydrocarbon are a small fraction of total hydrocarbon in CNG vehicles.

**Certificate from ARAI says particulates negligible.**

---

2. Ministry Road Transport and Highways. The Gazette of India Notification, April 24, 2001, GSR 286 (E), New Delhi, mimeo.
33) With the emissions from the CNG vehicles being more than comparable EURO IV standards, the contention of the union of India that a mix of diesel buses and CNG buses would make a difference of only 2% in the pollution levels is patently untenable. In the case of particulates, current CNG vehicles are 15 times better than EURO-II diesel vehicles (with 500 ppm sulphur) and only Euro IV diesel vehicles are comparable with diesel vehicles. In fact, the certificate issued by the Automotive Research association of India (ARA) to the bus manufacturers says that particulate emissions were negligible and could not be measured. The aforesaid analysis emphasises the need for change to non-liquid fuel like CNG or LPG so as to improve the air quality in this country and not merely of Delhi. Such changeover may perhaps obviate the need to manufacture vehicles meeting EURO-III or EURO-IV standards.

34) It was a result of the various orders passed by this Court that the air pollution level in the city has been stabilized. In 2000, the levels of annual average levels of RSPM declined to 186 ug/cum from 222 ug/cum. This is no small achievement as the city continues to add over 2,00,000 vehicles each year and its total vehicular fleet is larger than that of Kolkata, Mumbai and Chennai put together. But even with these efforts, its RSPM pollution remains roughly 3 times above the national standard for annual average concentration of RSPM mandated under the Air Act, 1981.

35) It was repeatedly contended on behalf of the Union of India that no other city in the world had introduced CNG buses at scale
directed by this Court. Both the state Government and the Union of India had urged that the CNG technology was still evolving and experimental. It is no doubt true that most of the cities of the industrialized world do not have large numbers of CNG buses, but the share of natural gas buses, needed to meet the stringent norms in the future, are growing. The data filed indicates that in the United States CNG buses account for 18 per cent of the current bus orders. Under pressure to clean up the air because of the approaching Olympic Games in 2004, Beijing has resorted to an alternative fuel strategy. Latest figures from Beijing indicate that there will be 18,000 buses fuelled by CNG, LPG and electricity in that city. By 1999, Beijing had 1300 CNG buses and the numbers are growing rapidly to meet the Olympic deadlines. Similarly, the Ministry of Environment in South Korea – partly to meet the targets in time for 2002 World Cup Soccer aims to induct 20,000 natural gas buses in its fleet and already 3000 such buses are playing. [Source; Moon-Soo Ahn 2000, Korean CNG bus programme. The Environmental Benefits, Ministry of Environment, Korea, Automotive Pollution Control Division, mimeo.]

36) From the aforesaid, it is clear that the alternative fuel of CNG, LPG and electricity is a preferred technology which critically polluted cities like Delhi need as a leapfrogging technological option.

37) This Court has shown concern about the reports relating to adulteration of petroleum products in Delhi. A report was called for from the Bhure Lal Committee. The said report confirms that adulteration is taking place. The sample failure rate in the study
which has been carried out was 26 per cent. The report also indicates that the existing fuel specification standards and the tests specified are inadequate for detecting adulteration. Two dummy samples—one with 10 per cent and the other with 20 per cent kerosene were sent to the Fuel Testing Laboratory, Noida. The result of the test report of the test laboratory showed that the product met the specification of HSD. However, a third sample with 15 per cent contamination was declared as not meeting the HSD specification. This shows that reliance cannot be placed on such laboratories, which puts in great doubt the entire mechanism for detection of adulteration. Considering the quantity of kerosene, which is supplied to Delhi, it is not improbable that this is one of the ingredients used, along with naphtha etc. for adulterating the fuel supplied to the customer. Under the circumstances, merely lowering the sulphur and the benzene content in diesel and petrol respectively will have a little effect unless and until the oil companies can guarantee that the fuel which was sold from the dispensing stations is pure and unadulterated. In fact, there is one public sector undertaking which advertises its petroleum products as "pure for sure". It guarantees that the fuel, which can be obtained from its dispensing stations, is unadulterated. This by itself clearly indicates acknowledgement by the petroleum industry that adulteration in not a small measure taking place and, therefore, the need to advertise the purity of the products sold by the Bharat Petroleum. It has been alleged, and there is strong basis for this, that as a result of adulteration, large amounts of illegal gains and profits are being made. There are various players in this racket. It
is not surprising, therefore, that there is stiff resistance to the implementation of the orders of the Court for switch-over to gas which cannot be adulterated and will undoubtedly cause financial loss to the members of the unholy aligns of adulterators.

38) As per the available information there seems to be no apparent shortage of gas. The supply of gas from the South Bassein gas fields has increased over the passed some years, from 38 mmscmd to 41 mmscmd. Major investment has already been sanctioned for expansion of infrastructure to supply natural gas as well regassified LNG to northern India.

39) The Union of India has argued that break down in the pipeline would lead to disruption in supply to the city and could paralyse the transport system which would be solely dependent on CNG. However, available information suggests that the possibility of the pipeline breaking down is remote. Furthermore, the pipeline itself stores up to 3 months of gas supply needed for Delhi.

40) the Union Government has to allocate more gas to Delhi to implement the order of this Court. In January, 2002, the Union Government has roughly doubled its earlier allocation to Delhi's vehicular fleet. But even this increased allocation-by diverting gas from a single user, Maruti Udyog Limited-will be inadequate for implementing the Court's order.

41) To meet the needs of current and projected vehicles in the city-the city requires mere 4.8 per cent of the current supply of gas by the HBJ pipeline. The production of gas in the South Bassein gas field has also increased over the last 2-3 years. But the increased
production has been allocated to industries, instead of meeting the needs of vehicles arising out of this Court's orders.

**According to available information:**

1. Reliance Industries got an additional 0.7 mmcmd
2. Essar got an additional 0.4 mmcmd;
3. Gujarat State Fertilizer Corporation got an additional 0.4 mmcmd;
4. GIPCL (power generating company in Baroda) got 0.5 mmcmd (this gas is being reported supplied without any allocation by the Government and as a "matter of favour");
5. IPCL-Dahej got an additional 0.85 mmcmd.

42) As per the latest figures available, there are 3,727 CNG buses on the road. The additional number of buses, which have to do phased out are 6,338. Once this is done, the total number of CNG buses on the road will be, 10,065.

43) In the I.A. filed on behalf of the bus manufactures, it is stated that 1500 chassis, which had been ordered, are ready for delivery but the persons who placed orders have not taken the delivery. Therefore, at least 1500 buses can be replaced immediately. As per the affidavit filed by the manufacturers, between Ashok Leyland and TELCO, they have an installed capacity, of 1,100 buses per month. Assuming production of around 70 per cent of the installed capacity, it would be safe to proceed on the footing that between the two of them they can provide 800 buses a month. If all the bus operators chose to buy new buses then @ 800 buses per month, the entire fleet of remaining 4838 buses, in addition to
the 1500 chassis ready for delivery, can be phased out in not more than 7 or 8 months.

44) The request of the Government for phasing out 200 buses a month appears to be based on some imaginary shortage in the availability of gas. There is no credible material placed before the Court to show that the distribution of gas is consistent with the principle of sustainable development. Conferring economic advantage upon industry by making available cheap gas in preference to the need for supplying gas for environmental reason is inconsistent with the settled Constitutional position.

45) Even though the time for phasing out diesel buses had expired but in view of the situation created by the Government of not cooperating or complying with the Court's order, a different formula has to be worked out so as to cause as little inconvenience to the traveling public as possible, while at the same time punishing the wrong doer. Directions are, therefore, to be issued regarding the lifting of 1500 buses plus phasing out of 800 buses per month. The permits to be given are to be the time bound and the continued operation of the diesel buses till they are replaced would require them to pay Rs.500/- per bus per day for 30 days of operation and thereafter Rs.1,000/- per day and the same is to be deposited with the Director of Transport, Delhi.

46) Before concluding on this aspect, we may notice that on a query raised by the Court, the Union of India has informed the LPG has also been permitted to be used as fuel by the transport sector. This can and should be an alternate fuel to CNG available to the users
as LPG is, at present, environmentally acceptable. It is for the Government to take steps so as to increase its supply. We may here note that there are, as per CPCB data, at least nine other polluted cities in India where the air quality is critical. These cities are Agra, Lucknow, Jharia, Kanpur, Varanasi, Faridabad, Patna, Jodhpur and Pune. But there appears to be no effective action plan to address the problem of these cities and the Mashelkar Report ensures their suffering for quite some time. If no immediate action is taken, then it may become necessary for some orders being passed so as to bring relief to the residents of those cities.

47) Lack of adequate supply of CNG has been a cause of concern and has been referred to in the various orders passed by this Court from time to time. In the absence of proper response from the government authorities, there is no alternative but to issue the following directions:

(1) The Union of India will give priority to transport sector including private vehicles all over India with regard to the allocation of CNG. This means that first the transport sector in Delhi, and in the other air polluted cities of India, CNG will be allocated and made available and it is only thereafter if any CNG is available, that the same can be allocated to the industries, preference being shown to public sector undertakings and power projects.

(2) I.A. of the Union of India for extension of time to run diesel buses is dismissed with costs of Rs.20,000/- (Twenty
Thousand only). It is made clear, and it is obvious in our Constitutional setup, that orders and directions of this Court cannot be nullified or modified or in any way altered by any administrative decision of the Central or the State Governments. The administrative decision to continue to ply diesel buses is, therefore, clearly in violation of this Court's orders.

(3) Those persons who have placed orders with the bus manufacturers, and have not taken delivery of the same shall do so within two weeks from today, failing which their permits shall stand automatically cancelled.

(4) As owners of diesel buses have continued to ply diesel buses beyond 31st January, 2002, contrary to this Court's orders, for the disobedience of the said orders, the Director of Transport, Delhi, will collect from them costs at the rate of Rs.500/- per bus per day increasing to Rs.1,000/- per day after 30 days of operation of the diesel buses with effect from tomorrow and the same shall be deposited in this Court by the Director of Transport by the 10th day of every month.

(5) The NCT of Delhi shall phase out 800 diesel buses per month starting from 1st May, 2002. Till all the diesel buses are replaced the bus owners who continue to ply the diesel buses shall pay as per direction No.4 hereinabove.

(6) For implementing these directions, the Union of India and all governmental authorities, including IGL shall;
(a) Allocate and make available 16.1 lakh kg per day (2 mmscmd) of CNG in the NCT of Delhi by 30th June, 2002 for use by the transport sector;

(b) Increase the above supply of CNG whenever the need arises;

(c) Prepare a scheme containing a time schedule for supply of CNG to the other polluted cities of India and furnish the same to this Court by 9th May, 2002 for its consideration;

(d) It will be open to the Union of India to supply LPG in addition to CNG as an alternate fuel or to supply any other clean non-adulterable fuel as the Bhure Lal Committee may recommend.

(7) The NCT of Delhi had announced a scheme for financing CNG vans, to be run as taxis, for SC/ST. We direct a similar financing scheme be framed by the Union of India jointly with the NCT of Delhi whereby those of the permits of owners of diesel buses are cancelled due to non-conversion to CNG the same should, in the first instance, be allotted to SC/ST and to the other weaker sections of the society. Such a scheme should be prepared and implemented and a compliance report be filed within four weeks. The costs deposited under direction (4) above can be utilized in implementing the proposed scheme.

48) To come up on 9th May, 2002 for further orders by which date the Union of India and the NCT of Delhi will file a further report.
In the light of above discussions and analysis of the various cases it can be said that our judiciary is very much concerned for conserving the environment and enforcing the provisions of various environmental laws. It is the result of this Judicial activism which has been able to settle it beyond the doubt that right to have a clean environment and right to have hygienic and healthy environment are fundamental rights and thus these matters have occupied its place in part III of the Constitution.

The Judicial response regarding problem of noise is same like the other sources of pollution. The Superior Judiciary of the land has displayed dynamism to ensure the citizens' right to sleep, right to speak, right to read, right to transit, right to think and also to save the citizens' from being captive listeners. It is the judicial activism, which established it on firm ground that noise, not only creates pollution but it is a source of annoyance too.

5.3 SOME IMPORTANT CASES & DECISIONS REGARDING NOISE POLLUTION :-

In the case Rabin Mukherjee and others Vs State of West Bengal a writ application was moved by the petitioners for protection of their own rights and also in public interest being aggrieved by the nuisance and noise pollution which are being created in the impunity by the transport operators by indiscriminate installation and use of electric and artificially generated air horns which cause unduly rash, shrill, loud and alarming noise. In the writ petition, the petitioners prayed for a writ in the nature of Mandamus Commanding the Respondents to enforce the provisions of Rule 114 of the Bengal Motor Vehicles Rules, 1940 and to
enforce the restrictions against the use of such electric and other loud and shrill horns including air horns by operators of the transport vehicles. The case of the petitioners is that the State of West Bengal is a thickly populated area and the density of population is one of the highest in India. It was further alleged that the prevailing noise level in this state particularly in the Calcutta Metropolitan Area is far in excess of the permissible limit and it is no longer in dispute that such excessive noise level poses positive danger to the residents of the respective locality. It also poses serious threat to the health of the residents apart from causing serious inconvenience to the week, infirm and indisposed people. It was also alleged that even normal people are increasingly finding it difficult to enjoy their lives or to carry on their works whatever be their nature. The petitioners further contention was that one most important factor contributing to the noise nuisance, particularly in the case of those who have residences in the Calcutta Metropolitan Area or any other urban area, is the blowing of loud and shrill horns by operators of transport vehicles. The said loud and shrill horn either electric horn or air horn mechanically generated and stored in an air tank in most of the transport vehicles. It was further alleged by the petitioners that sudden blowing of such horns by transport vehicles produces a rude shock in the human system and is acknowledged to have serious effects on various aspects of human life including blood pressure, mental and nervous system. It also does not permit effective concentration to be provided because of sudden disruption caused by such loud and shrill horns. The transport operators particularly the goods transport vehicles operate about 18 hours a day with such type of horns.

1. AIR 1985 Cal 222
In the support of his petition the petitioner referred rule 114 of the Bengal Motor vehicles Rules, 1940. The said Rule reads as follows:

"114 Horns-

a) Every motor vehicle shall be fitted with a horn or other approved device available for immediate use by the driver of the vehicle and capable of giving audible and sufficient warning of the approach or position of the vehicle.

b) No motor vehicle shall be fitted with any multi-toned horn giving a succession of different notes or with any other sound producing device giving any unduly harsh, shrill, loud or alarming noise.

c) Nothing contained in sub-rule (b) shall prevent the use on vehicles, used on ambulances or for fire fighting or salvage purpose or on vehicle used by police officers in the course of their duties, or on other similar vehicles, of such sound signal as may be approved by the Registering Authority.

d) Every transport vehicle shall be fitted with a bulb horn"

On the basis of this rule it was contended that in spite of these provisions the transport operators in gross violation of such rules are using air horn and electric horn which produces a shrill and loud noise and which is not also necessary for running or operating the vehicles.

It was contended in paragraph 15 of the petition that recently a research was conducted jointly by Basu Bijnan Mandir and the Presidency College, Calcutta about noise pollution in the city of Calcutta and the suburbs. On such analysis it is found that the atmosphere and the environment is very much polluted from indiscriminating noise emitted from different quarters and on research it was found that persons who are staying near the airport, are
becoming victim of various ailments. Such person even becomes victim of mental disease. On such research it was also found that workers in various factories even become deaf and hard of hearing. It was further found on such research that as a result of this excessive noise pollution, people suffer from loss of appetite, depression, mental restlessness and insomonia. People also suffer from complain of excessive blood pressure and heart trouble. It is not necessary to go in to the question about direct effect of such noise pollution because of indiscriminate and illegal use of such electric and air horn as it is an admitted position that the same is injurious to health and amongst different causes of environmental pollution, sound pollution is one which is a matter of grave concern.

Rule 114 (d) of the Bengal Motor Vehicles Rules, 1940 provided that every transport vehicle should be fitted with a bulb horn. The ‘transport vehicle’ has been defined in section 2 (33) of the Motor Vehicles Act, 1993 (hereinafter referred to as the said Act) that provides that transport vehicle means a public service vehicle or the goods vehicle. “Public Service Vehicle” has been defined in 52 (25) of the said Act, which provides that public service means any motor vehicle used or adopted to be used for carriage of passengers for hire or reward and includes a motor cab. Contract carriage and state carriage. “Goods Vehicles” have been defined in sec. 2 (28) of the said Act which provides that goods vehicles means any motor vehicle constructed or adopted for use of carriage of goods or any other motor vehicle not so constructed or adopted when used for carriage of goods solely or in addition to passengers. So within the scope and ambit of “transport Vehicles” the stage carriages, contract carriages including mini buses, lorries and other transport vehicles come in. It is a mandatory provision
as provided in R 114 (d) of the Bengal Motor Vehicles Rules 1940 that each transport vehicle namely stage carriages, mini buses, lorries etc. can not be fitted with any other of horn excepting a bulb horn. But the said mandatory provision of the said Rule is now observed only in breaches and no transport vehicle owner.

So in view of the mandatory provision of R 114(d) of the said Rules, the transport vehicles are using electric and air horn in a reckless manner and that surprisingly no steps had been taken by the authorities concerned for violation of the said mandatory provision. See 112 of the Motor Vehicles Act provides that whoever contravenes any of the provisions of the said Act or any Rule made there under shall, if no other penalty is provided for the offence be punishable with fine which may extend to Rs. 100/- and if having been previously convicted or any offence under the said Act, is again convicted of an offence under this Act, with fine which may extend to Rs. 300/-

The respondent could not be able to dispute the position that R 114(d) of the said Rule is mandatory in nature and that the transport vehicle cannot use any other form of horn except the bulb horn.

The following order is passed by Bhagwati Prasad Banerjee, J. in this case. Considering the facts and circumstances of the case and considering the mandatory provision of R 114(d) of the said Rules and considering the fact that in a congested state like the state of West Bengal, sudden blowing of such horn by transport vehicles produces rude shock in the human system and is acknowledged to have serious effect on various aspect of human life including blood pressure, mental and nervous system, it is the duty of the respondents to enforce the provisions of R 114(d) of the said Rules. It is also a matter of common knowledge that such transport vehicles even for overtaking another
vehicle on the road small or big continuously blow such electric and/or air horn which produces a shrill or loud noise and which creates annoyance to everyone who resides by side of the road and to all pedestrians including the persons traveling in the vehicles. The indiscriminate use of such horn is amounting to noise pollution in the city of Calcutta and the congested areas of the State of West Bengal and that the same have adverse effect on the public health of the people which creates many a complication including mental restlessness, blood pressure and heart trouble and that it is necessary in the interest of the public at large in the state of West Bengal to stop such noise pollution arising out of unnecessary use of such electric and air horn deliberately. The respondents are under a statutory obligation and duty under section 112 of the Motor Vehicles Act to punish the person who contravenes the provision of R 114(d) of the said rules. But unfortunately, no positive step had yet been taken in the matter. It is crystal clear that in spite of such statutory provision, such transport vehicles are allowed to use such type of prohibited horn and no action is taken against the person who has been contravening the provisions of the said Rules. The passenger transport cannot operate such types of prohibited horn excepting that they can only use bulb horn as provided within section 114 (d) of the Motor Vehicle Rules. The use of such electric and air horn has increased to an alarming extent that it cannot be checked over night by starting prosecution in usual manner under section 112 of the said Act. Under the circumstances aforesaid, I allow the application and direct the respondents to enforce strictly the Provisions of R 114(d) of the Motor Vehicle Rules, 1940 and to enforce restrictions against the use of such electric and other loud and shrill horn including air horn by operators of the vehicles and considering the problem to control such large scale
violation and considering the fact that almost all the transport vehicles are fitted with such prohibited horns, I direct the state Government to issue notice and/or notification immediately notifying to all the transport vehicle operators about the restrictions provided in R 114(d) of the said Rules and directing them to remove the electric, air and other loud and shrill horn forthwith and to use only bulb horn in the State of West Bengal giving the operators 15 days time to change the electric and air horn and to fit vehicles with bulb horn with the warning that failure to remove such prohibited horns from their vehicles, penal action should be taken against them according to law and further it should be notified that no such transport vehicles should be given certificate of fitness under see 38 of the Motor vehicles Act, if fitted with such horns which are prohibited under R. 114(d) of the Rules. I also direct the respondents to proceed against the vehicle operators by taking penal action if they fail to remove such types of prohibited horns after the expiry of the period of 15 days which shall be provided for change of such horn by notification or by notice to be issued by the State Government in this behalf giving wide publicity through the press and the mass media. Such operators should also be warned that failure to change such types of prohibited horn the said operators shall be liable for prosecution in accordance with law.

The State Government should also take steps for notifying such restriction regarding the use of such types of horn in respect of vehicles, which enter in to the state of West Bengal from other states so that they may be aware of such restriction in the matter of use of such prohibited horn in the state of West Bengal.

It is also desirable in the larger public interest that the respondents and the State Government and the authorities should take
suitable measures to implement the provision of R. 114(d) of the Motor Vehicles Rules, 1940 and no certificate of fitness should be granted under see. 38 of the said Act, in case of non compliance of the provisions of R. 114 (d), so that this type of noise pollution is eradicated to an early date from the state of West Bengal. Before I part with the matter, I must place it on record by appreciation for the petitioners for their endeavour to stop such noise pollution in the larger interest of the people in State of West Bengal in the matter.”

In the case P.A. Jacob Vs The Superintendent of Police Kotiaiyam¹, it was held “The right to speech implies, the right to silence. It implies freedom, not to listen and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. Free speech is not to be treated as a promise to every one with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. A person can decline to read a publication, or switch off a radio or a television set. But he cannot prevent the sound from a loudspeaker reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. A loud speaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device and it has

¹ AIR 1993 Ker 1
no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Art 19 (though they may be useful to man to express his faculties) no more, a loud speaker. The use of a loud speaker may be incidental to the exercise of the right. But its use is not a matter of right, or part of the right.

The petitioner of this case was belong to a denomination of Christianity known as knanaya'christians and claiming a fundamental right to use a loudspeaker at public meeting to voice his views and therefore had prayed before the court to restrain the respondents from interfering with the use of a loudspeaker by him. It was submitted by the petitioner that freedom of speech and expression imply freedom to use amplifying devices and cited the decision of the Gujrat High Court in Indulal VS State\(^1\) wherein the Gujrat High Court relied on the opinion of the Judicial committee in Francis VS Chief of Police\(^2\) to hold that freedom of speech included freedom to circulate ones view. There is also a decision.

The Kerala High Court had observed in this case, “The core question is whether the constitution guarantees a right to use a sound amplifying device or whether use of such a device is part of the right to freedom of speech. Freedom of speech and expressions are right cherished by all free societies. That freedom implies not only freedom to

---

1. AIR 1963 Gujrat 259
2. (1973) 2 All ER 251
express the thought we approve of, but freedom to express the thought, we hate. A debate of ideas is essential in any free society. No one can forbid legitimate efforts to change the mind of society by expression of views, or advocating different persuasions or even by questioning the existing order J.S. Mill said. If we never hear questions, we will forget the answers.

Maintenance of opportunity for free political discussion is thus a cardinal principle of our constitutional system. History bears witness to this process. Debate, brought in its wake, new thoughts and new ethos. Time has upset many fighting faiths. What was once regarded blasphemy, became the truth of another generation.”

In this regard the court had considered some important cases such as in Abrams VS US\(^1\).

“Men may come to believe; even more than they believe the very foundations of their own conduct, that the ultimate good desired is better reached by a free trade in ideas that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely may be carried out. That is the dictum of our Constitution.

In U.S. VS Schiwwmer\(^2\)

“Every idea is an incitement ... eloquence may set fire to reason. If in the long run the belief expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance to have their way.”

1. 250 US 616
2. 297 US 644
The Court had also considered the statement of Jefferson which runs as follows:-

"No one has a natural right to commit aggression on the equal rights of another."

The Court also had gone through the statement of J.S. Mill, which runs as follows:-

"If all mankind minus one were of one opinion, and if only one person was of contrary opinion, mankind would be no more justified in silencing mankind."

In Abrams VS US\(^1\) the United States’ Supreme Court said:

"Nobody can be compelled to accept any idea ... not even of national unity."

Again the court considered Breard VS City of Alexandria\(^2\), the Court highlighted the rights of the recipient or captive audience:

"Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights of those, other than the advocates, are involved. By adjustment of rights we can have, both liberty of expression and an orderly life'.

The Honourable Court had considered the observation of Justice Douglas which runs as follows:- "right to be let alone is beginning of all freedoms .... When we force people to listen to another’s ideas, we give the propagandist a powerful weapon. One man’s lyric may be another’s vulgarity."

It was further observed by this Hon’ble Court, “with great respect I find it difficult to agree with the view of the Gujrat High Court in Indulal VS State\(^3\) that freedom of speech includes freedom to use sound

\(^1\) 250 US 616
\(^2\) 341 US 622
\(^3\) AIR 1963 Guj 259
amplifiers. In Francies VS Chief of Police\(^4\), relied on by the Gujrat High Court to find an absolute freedom, Pearson L.J. pointed out that.

"Some regulation of the use of loudspeaker is required in order that citizens who do not wish to hear what is being said may be protected"

This limitation was noticed by A.L. Good Hart (69 Law Quarterly Review 317) If an absolute right is conceded in this behalf, it will be an unlimited charter for aural aggression. If a sound amplifier is accepted as an attribute of freedom of expression, then on principle, use of Radio Transmitter also cannot be denied. There can be other extensions, pernicious in their effect on national security, public order or morality. Even the first amendment did not acknowledge use of loudspeaker as part of the right of free speech. In Kovacs VS Cooper\(^1\), the majority of seven judges held that sound amplification in public places, is not part of the right of free speech. Kovacks was convicted under an ordinance, prohibiting use of sound amplifiers in a public street. He challenged the conviction, as violative of First Amendment Protection. The Court held that restrictions on free speech, imposed by the ordinance, were constitutionally permissible. Frankfurter and Jackson (JJ) held that sound trucks in streets could be absolutely prohibited without violating the constitutional right of free speech. Police power of state extends beyond health and morals and comprehends the duty to protect the well being and tranquility of the community"

The court observed:

"Such direction would be dangerous to traffic at all hours ... the quiet and tranquility, so desirable for city dwellers would be at the mercy of advocates of particular religious, social or political
persuasions, we cannot believe that the right of free speech compel a Municipality, to allow such mechanical voice amplification on any of its streets. The right of free speech is guaranteed to every citizen so that he may reach the minds of willing listeners and to do so, there must be opportunity to win the attention ...opportunity to gain the public ear, is not by objectionably amplified sound on the streets. The preferred position of freedom of speech in a society that cherishes liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the right of others would be harsh and arbitrary in itself.”

Justice Jackson, concurring with Frank-furter J. Said:

“I believe that operation of mechanical sound amplifying devices conflicts with quiet enjoyment of home and park, and with safe and legitimate use of streets and market places... Freedom of speech for Kovacks does not in my view, includes freedom to use sound amplifiers to drown out natural speech of others.”

Kovacs Vs Cooper\(^1\) marked a sharp dissent from the view then prevailing. The court overturned the law in Saia VS Newyork\(^2\) and held that the right to be heard is no more important than the right to be let alone. In Public Utilities Commission VS Pollack\(^3\) the Court ruled that use of a radio to beam communal broadcasts in a street car, was not protected by the First Amendment. The Court observed.

“...the right to be let alone is the beginning of all freedoms. The present case involves a coercion to make people listen.”

The same view was reiterated in Lehman VS City of Shaker Heights\(^4\) while petitioner clearly has a right to express his views to

---

1. 336 US 77  
2. 334 US 558  
3. 343 US 451  
4. 418 US 298
those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it. In my view, the right of the commuters to be free from forced intrusions on their privacy precludes the city from transforming its vehicles of public transportation, in to form us of dissemination of ideas upon a captive audience.

A person can decline to read a publication or switch off a radio or television set. But, he cannot prevent the sound from a loud speaker reaching him. He could be forced to hear he wishes not, to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. Limits must be drawn for liberties, lest they turn in to license, and the antithesis of liberty in its true sense.

It is useful in this context, to refer to the opinion of Jackson J. in Arther Terminiello VS City of Chicago¹, Terminiello was convicted and sentenced to a fine of 100 Dollars, for making a speech stirring the public to anger, unrest and disturbance. He challenged the conviction, as violating the protection of free speech. The court said:

"Underneath a little issue of Terminiello and his 100 Dollar fine, lurks some of the most far reaching constitutional questions, that can confront a people who value both liberty and order ... an old proverb warns us to take heed, lest we walk in to a well looking at the Stars... Civil Liberties imply the existence of an organised society maintaining law and order, without which liberty would be lost .... Terminiello’s right to speak itself will be in jeopardy, if Chicago withdrew its police officers, or if they should look some other way, when the crowd threatened Terminiello .... In the long run, maintenance of free speech

¹ 337 US 1
will be more endangered if the population can have no protection from the abuses which lead to violence. No liberty is more secure by holding that its abuses are inseparable from its enjoyment. We must not forget that it is the free democratic communities that ask us to trust them to maintain peace with liberty, and that factions engaged in the battle are not interested permanently in either. What would it matter to Terminiello if police better up some communities, or on the other hand, if the communities better up some policemen? ... The choice is not between order and liberty. It is between liberty with order, and anarchy without either. There is a danger that if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional bill of rights into a suicidal fact.

Professions of rights, distanced from realities of life, would make liberties unreal. The liberties of some could prove to be the end of the liberties of others. The loquacious may silence the meek: The state must protect the mute, the unorganized and inarticulate, against onslaught of enthusiasm of the vocal or the vociferous. It is no use saying hosannas to freedom, unless such freedom is real. Real they will be, only if there is an ordered society. Order to liberty, is what oxygen to life is. There is no basis to think that freedom and order are not compatible. They are complementary liberty, will be lost in excess of anarchy, if there is no order. Regulation and suppression are not the same in purpose or result. Time it is to think, whether undistinguished assertions of rights by some, have not imperiled rights of others. If one were to recognize right to protest by blocking roads and railways, it is recognition of a right, to deny rights of the peaceful citizens. Acrons of today, will grow in to Oaks of tomorrow.
As observed by Lathem C.J. in Adelaide Co. VS The Commonwealth¹, the court should take a commonsense view and be actuated by considerations of practical necessity. A similar view finds expression in Shamsher Singh VS State of Punjab².

The court true to its function, must try to reflect the gloss by balancing its ruling...denying judicial aid to undermining the substance. ...A coup can be constitutionally envisioned by an erroneously literal interpretation...we can not allow a confusion of vision to creep in to our constitutional interpretation ....

Rights cannot be viewed as axioms in a book of mathematics without the risk of generating. “A constitutionally envisioned coup” making a “suicide pact with the bill of rights.” Social dimensions, group realities of life, the great trust of history and experiences of life, must set the tone and nuances, and modulate views. The pitfall counseled against by Hughes, C.J. must be headed. The Chief Justice said.

“Many of our decisions are emotional. The rational part of us supplies the reasons for supporting our predilections.”

...A loud speaker is a mechanical device and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine is not intervention with or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Art.19 (though they may be useful to man to express his faculties). The use of a loudspeaker may be

1. 67 CLR 116  
2. AIR 1974 SC 2192
incidental to the exercise of the right. But its use is not a matter of right, or part of the right. I am in no way, not in the least way, narrowing down a free speech, nor, attempting to cabin, confine and crib a cherished right while holding that a mechanical aid is not a complement of human faculty, or its use the extension of a constitutional right. But I consider that any measure of cosmetic surgery on the face of an aggressive act of aural aggression or trespass on the mind of another, will not make it resemble a right.

Apart from the right to be let alone, freedom from aural aggression – Art. 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone, is positively the right to be free from noise. Exposure to high noise, is a known risk and it is proved to cause bio-chemical changes in man, elevating levels of blood catecholamine, cholesterol, white cell counts and lymphocytes. Laboratory studies made by monitoring electro encephalographic (EEG) responses and changes in neurovegetative reactions during sleep, show that disturbance of sleep becomes increasing apparent as ambient noise levels exceed about 35 dB (A) leg. Noise produces different reactions along the hypothalamohypophyseal – adrenal axis, including an increase in adenocorti-cortopichormone (ACTH) affecting sympathetic division of the autonomic nervous system. Eye dilation, bradycardia and increased skin conductance are proportional to the intensity of noise above to dB SPL. Incidence of peptic ulcer is high among noise-exposed groups. Noise causes contraction of the flex or muscles of the limbs and the spine, and is reckoned as an environmental stress that could lead to non-speaker health disorders. Exposure to high noise in every day life may contribute to eventual loss of hearing (SOCIO-accuses), and this in turn can affect speech communication. Vasoconstriction or
vasodilatation of blood vessels also is induced by high levels of noise during acute exposures (Rose-cran et al, 1966) complaints of nystagmus (rapid involuntary side to side movements) Vertigo (dizziness) and balance problems have also been reported due to noise exposure.

...sound levels generally caused by loud speakers transgress safe limits by a wide margin. Loud speakers have become part of political, social, religious and cultural life of this country.

To allow advocates of various persuasions to commit unlimited aural aggression on unwilling listeners would be to allow them to subjugate the right of life of unwilling listeners, to their aggressions. Protests made by sufferers like the student community or sick, generally fall on heedless ears.

...while petitioner has no fundamental right to use a loudspeaker, he will be free to avail of the amenity of using a loudspeaker in a reasonable manner. Second respondent, sub inspector of Police, will permit petitioner to hold meetings with the use of loudspeakers of a box type, for purposes of holding meetings as indicated in the writ petition. But the output from the loudspeaker shall not exceed the range, necessary to reach a willing audience, confined in a reasonable area ...”

In the case Burabazar Fire works Dealers Association and other VS The Commissioner of Police, Calcutta¹ it was held that “Art. 19(1) (g) of the constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that communities safety, health & peace. Accordingly there is no inherent or fundamental right to a citizen to manufacture, sell or deal with fire works which will create sound beyond a permissible limit and which will generate pollution, or which would endanger the health and

---
¹ 1997 (2) Cal LJ 468
the public order. A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by bursting out from a noisy fire works. It may give pleasure to one or two persons who burst it but others have to be a captive listeners whose fundamental rights guaranteed under Art 19 (1)(a) and other provisions of the constitution are taken away, suspended and made meaningless. However, as in the instant case, without taking any formal decision the Pollution Control Board issued order in pursuance of direction of High Court restricting manufacture, sale, use of certain fire works creating sound beyond permissible limits, the Board was directed to take such decision regarding sound level to be used in the state, after considering all aspects of matter. In such a case, it could not be said that the parliament and/or the legislature in their wisdom, had not passed any law for putting such a restriction and in the absence of any specific provision in any law, the administration cannot do this thing through the order of the court. If a citizen has a right it is also equally a duty on the part of a High Court to see that such rights are preserved and not allowed to be destroyed. Legislature may not rise to the occasion but that does not mean that court will keep its hand folded in the absence of any legislative mandate. The courts are the custodian of the right of the citizens and if the court is of the view that citizens’ right guaranteed under the constitution of India are violated; the court is not powerless to end the wrong. Principal of Judicial activisms confers the power upon the court to be active and not to remain inactive for the purpose of protecting rights, duties and obligations of the people. Further, in India, no effective and elaborate law has been made for controlling the noise creator. But under Art 19(1)(a), read with Art 21 of the Constitution of India, the citizens have a right of a decent environment and they have a
right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary ingredients of the right to life guaranteed under Art 21 of the constitution."

In the case Om Birangana Religious Society Vs. State and others\(^1\), it was contended on behalf of the petitioner which is a religious organisation claims that the respondent should not interfere with the right of user of microphones, loudspeakers and for amplifying human voice and fax for amplifying other sounds while performing daily pujas and other religious activities and display of religious songs. The petitioned approached before the court with a pray for issuing the writ of mandamus against the District Magistrate and/or the sub-Divisional officer Ghatal so that they became forced to provide necessary permission to the petitioner to use microphone during puja performance, arati, nityapuja and that nobody ever raised any objection as to the performance of their avobestated religious activities.

In this regard it has held by the Bhagawati Prasad Banerjee J. That the rights of the petitioner or any association, religious or otherwise, cannot be said to be absolute. Article 19(1)(a) provides Fundamental Rights on all citizens to Freedom of speech and Expression, and that right is only subject to restriction imposed under Article 19(2) of the Constitution. The freedom of speech and expression of a citizen could not be interfered with save and except in accordance with the provisions of Art 19 (2) of the Constitution. At this juncture the Hon’ble Court has considered the miserable conditions of the captive listeners and has hold that if permission is granted to use microphone at a louder voice, such a course of action takes away right of a citizen to

\(^1\) (1996) 100 Cal WN 617
speak with others, the right to read or right to know and the right to
sleep and rest or to think any matter. Freedom of speech and expression
guaranteed under Art 19(1)(a) of the Constitution of India includes, by
necessary implication, freedom not to listen and/or to remain silent.
One cannot exercise his right at the cost of and in total deprivation of
others rights. The authorities concerned upon a person or a religious
organization to exercise their rights suspending and/or taking away the
rights of others cannot confer a right.

Regarding the question of right to propagate religion guaranteed
under Art 25 of the constitution, as this matter was raised on behalf of
the petitioner, it has held by the Honourable Court that 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. Undoubtedly, one can practice, profess and propagate religion,
as guaranteed under Art 25(1) of the Constitution, but that is not an
absolute right. The provision of Article 25 is subject to the provisions of
Article 25(1), read with Article 19(1) of the Constitution, it cannot be
said that a citizen should be coerced to hear anything which he does not
like or which he does not require. Amplifier and microphone create
tremendous noise and sound, which may travel at last half to one
kilometer away. Having required to the provisions of Article 19(1)(a) of
the constitution, it cannot be said that the District Magistrate, sub-
Divisional Officer and the police authorities are the soul authority who
can grant at will permission without having any regard to the
fundamental rights of the fellow citizen. Such authorities by a granting
permission to display microphone, cannot make the public the captive
listeners. The citizens have a right to enjoy their lives in the way they like, without violating any of the provisions of the law. It has been further held by the court that in a religious place or congregation, the use of microphones should be limited to the persons or the followers, or the disciples, who are there, so that they may hear and know, they may follow and understand what is meant for them. No person and/or organization can be allowed to use microphones at a high noise level or without any volume control. The Honourable High Court fixed the following terms and conditions in this case for the concerned authorities, which are mandatory to consider at the time of granting permission to use microphones.

1. The Pollution control Board shall maintain noise level registers for measuring the level of noise;

2. The said authority shall indicate the level of noise, which could be permitted by use of microphones on any occasion;

3. Powers of the District magistrates, sub-Divisional officers and other authorities are subject to any direction and/or conditions imposed by the West Bengal pollution control Board.

4. The persons or persons or any business house dealing with or letting or selling the microphones/loud speakers and the operating apparatus shall be bound to seal the volume and the noise level according to the directions of the pollution control Board, before letting or parting with or selling such apparatus for any purpose. In default thereof, they should not be permitted to deal with such items. For this purpose, the pollution control Board shall issue directions from time to time in this behalf.

5. Loud-speakers should not be allowed to operate in the street between 9p.m. in the evening and 7a.m. in the following morning
for any purpose at any time including for the purpose of advertisement of any entertainment, trade or business. However this restriction shall not operate in respect of loud-speakers operating by the police, Ambulance or Fire Brigade in the exercise of any of the functions or by local authority within its area and for making announcement or making a declaration or giving some information which is necessary to the public, subject to such level of volume as specified by the West Bengal Pollution control Board.

6. If a loud-speaker is in or fixed to a vehicle is operated solely for entertaining or communicating to the driver or passenger of the vehicle or for giving warning to other traffic and so operated without causing any annoyance to any person of the vicinity.

7. For communicating with persons on vessel for the purpose of directing there movement of that or any other vessel.

8. If the loudspeaker forms part of a public telephone system.

9. The volume and noise level should be approved by the West Bengal pollution control Board and the police and the administration should enforce the same. So for as public meeting is concerned, the same should be used in such a manner and with such a volume which should not exceed the Level fixed by the pollution control Board which should be treated as registered level and the volume may be regulated in such a fashion so that it may reach to all persons who join in the meeting in a particular area and not beyond that.

10. Before granting any permission the purpose of use of microphones and / or loudspeakers and the area where such machines would be fitted. The police authority will inspect and seal the noise level in
that particular microphones apparatus so that on no occasion the noise level exceeds the fixed and registered noise level.

Actually in Om Birangana Religious Society VS State\textsuperscript{1}, where the Court had explained the provision of Article 19(1)(a) of the Constitution of India and it was held that “Within the scope and ambit of the provision of Article 19(1)(a) of the Constitution of India which provides Fundamental Rights of citizen of India to Freedom of speech and Expression and this right was only subject to restriction imposed under Art 19(2) of the Constitution. It was held that Freedom of speech and Expression guaranteed under Art 19(1)(a) of the Constitution of India by necessary implication right includes right to leisure, right to sleep, right to read and speak with others and even right to worship in his own way and that it has been held that sound is a known source of pollution and by means of sound through loudspeakers or others citizen cannot be made captive listeners and which forced to hear something which his body or system cannot hear and which he does not like to hear or likes to tolerate but he has to bear the tremendous effect of sound which had the effect of silencing him and have the chilling effect on all of his rights because of tremendous sound and noise, the citizens cannot exercise all these fundamental rights. Every citizen has a right but his right comes to an end when it tends to interfere with others right. Nobody can enjoy an exclusive right of his at the cost of /or suspending the rights of others.” It was also stated that “the Police Authorities and/or administrations have no right to grant permission to use microphone without any restriction with regard to the noise level and accordingly, directed that the pollution control Board should maintain

\textsuperscript{1} (1996) 100 Cal WN 617
Noise level Register for measuring the level of noise and said Authority shall indicate the level of noise, which could be permitted by use of microphone of any occasion.”

The court also had passed the order, “we also direct the Pollution Control Board to make suitable measures to stop creating sound pollution by means other than the microphones, such as user of electric air horn in public vehicles, fire works and other sources of sound nuisance. The Police authorities should also perform their duties in this connection for the purpose of controlling the sound pollution in the state with active collaboration and co-operation the Pollution Control Board.”

In pursuance of this order, the Member secretary of the Pollution control Board informed the Director General of Police, West Bengal as well as the commissioner of police, Calcutta by Memo 28-10-1996 about the order of the Honourable Court made in the case Om Birangana Religious Society. In Pursuance of this aforementioned order the Director General of Police, Police Commissioner of Calcutta and all District Magistrate were requested not to allow manufacturing, selling or storing or any fire works generating noise pollution. The fire works generating noise above 65 dB in the ambient atmosphere will be unfit for manufacturing, trading and use.

On the basis of the said order and directors, the commissioner of Police, Calcutta passed orders being Police order No. 1584 published in the Calcutta Police Gazette in its issue dated 4th November, 1996 which runs as follows.

“Whereas, information has been received from credible sources that there will be large scale manufacture, possession, transportation, sale, discharge and use of fire works, sound of which are likely to
generate noise exceeding 65 dB within the limits of Metropolitan area of Calcutta and its suburbs within the jurisdiction of Calcutta Police.

And whereas the schedule made under the Environment protection Rules, 1986 and Environment Protection (Third Amendment) Rules, 1989 prescribed a decibel limit of 65 below as Ambient Air Quality standard for commercial Areas;

And whereas, discharge or use of any such fore-works as per list given below, is certain to generate noise exceeding 65 decibels causing thereby injury to the health of the members of the public;

And whereas, I, D.C. Vajpai, Commissioner of Police, Calcutta being an Executive Magistrate for the metropolitan area of Calcutta and for the suburbs of Calcutta within the jurisdiction of Calcutta Police have been specially empowered by the state Government under Notification Nos. 2890-P and A.R. (P) 2P-01/96 PC dated 31.10.96 and No. 2894-P and A.R. (P) 2P-01/96 PC dated 31.10.96 respectively to act under see 144 of the code of criminal procedure, 1973 (Act of 1994).

And whereas in my opinion there is sufficient ground for proceeding under the said section for prevention of manufacture, possession, transportation, trading, sale, discharge and use of fire works generating a noise above 65 decibels.

Now, therefore, in exercise of power conferred by subsections (1) and (4) of section 144 of the Criminal Procedure Code I, the said D.C. Vajpai, commissioner of Police, Calcutta do hereby prohibit with effect from today (2-11-96) and until further orders within the limits of Metropolitan area of Calcutta and its suburbs within the jurisdiction of Calcutta Police any person or persons from the manufacture, possession, transportation, trading, sale, discharge and use of the following fire
CHAPTER V: Role Of Judiciary

works, which have been detected by West Bengal Pollution Control Board as to general noise above 65 dB.

1) Chocolate Bomb 2) chain crackers 3) loose crackers 4) Kali Patka 5) Dhani Patka 6) Dodoma 7) Seven shots 8) Rocket Bomb and 9) any other fire works generating a noise exceeding 65 dB as certified by the West Bengal Pollution Control Board.

This notification is issued in conformity with the order passed by the Honourable High Court, Calcutta in the writ petition of 1996:

Burabazar Fire works Dealers Association and others VS Commissioner of Police, Calcutta\(^1\) and other also order passed by the Hon’ble High Court in C.O.No. (4303) (W) of 1996. This order is subject to any further order, which may be passed by the Hon’ble High Court in the same matter.

Violation of any provision of condition of this Notification by any person or person or persons is actionable and punishable under the law.

Given under my hand and seal this day of 2\(^{nd}\) November, 1996.

Actually the cause of action for filing this writ petition are the order of the High Court made in the case Om Birangana Religious Society VS State\(^2\), the direction given by the W.B.Pollution Control Board on the basis of the order given by High Court in the said case and the above state notification/notice of the D.C. Calcutta which prohibited any person or persons from manufacture, possession, transportation, trading, sale, discharge and use of the aforesaid given list of fire works which can generate 65 dB or more. Burabazar Fire works Dealers’ Association challenged the aforesaid order and notification on the ground that the same violates the fundamental right guaranteed under

\(^1\) 1997 (2) Cal LJ 468, (1996) 100 Cal WN 617
Art 19(1)(g) to carry on trade and business under the Constitution of India.

It is submitted on behalf of the petitioner that schedule III laying down Ambient Air Quality standard in respect of noise could not be framed as noise is not connected with any solid, liquid or gas and the emission or discharge of any solid, liquid or gas is not related to sounds. It is further submitted that the said dB limit for daytime and night time which has been followed in Toto by the West Bengal Pollution Control Board and imposed restrictions in the State of West Bengal on the aforesaid standard is wholly related to Ambient Noise level and not impulsive noise level. In order to demonstrate the capacity to bear the Ambient Noise level reference was made to West Bengal Factories Rules 1958 which regulates the permissible exposure in case of continuous noise viz ambient noise and permissible exposure level of impulsive noise (sudden noise) from the said table it appears that the factory premises, the prescribed limit is 90 dB for 8 hours a day and 100 dB for 2 hours a day. So far as the impulsive noise is concerned the permissible exposure limit, was prescribed to be within pick sound Pressure Level in dB 140 permitted impulsive noise can be 100 times and on the contrary, in the Pick sound pressure level in dB 120 it could be 10,000 nos.

It was also contended that under the law or by the Central Pollution Control Board no sound level or standard for fire crackers have been laid down and accordingly the West Bengal Pollution Control Board or Police have no jurisdiction to lay down such conditions and restrictions which amounts to deprivation of the petitioners right to carry on trade or business guaranteed under Art. 19 (1)(g) of the Constitution. In this regard it was again submitted that there was no provision for the
delegation of power under the acts of the State Pollution Control Board and only the Central Pollution Control Board has the power to lay down standard for the quality of air and quality of air does not involve sound. On behalf of petitioner the notice of the Honourable Court was also drawn regarding the second meeting of the National Committee on Noise Pollution Control held in Calcutta on 5th September, 1997 where in the committee recommended that noise making fire works, which generated noise more than 100 dB (impulse) at 4 m distance, be phased out within next two years. If any State Board desires to ban such fireworks earlier, they may do so depending on local condition.

After hearing all the concerned parties to the case i.e. petitioner, W.B. Pollution Control Board and the state, it was held by Bhagwati Prasad Banerjee and Asis Baran Mukherjee JJ. “We are of the view that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fire works which will create sound beyond permissible limit and which will generate pollution which would endanger the health and the public order. A citizen or people can not be made a captive listener to hear the tremendous sounds caused by bursting out from a noisy fire works. It may give pleasure to one or two persons who burst it but others have to be a captive listener whose fundamental rights guaranteed under Article 19(1)(a) and other provisions of the Constitution are taken away, suspended and made meaningless.

The Order passed by the commissioner of Police, pursuant to the purported directions issued by the court and the pollution control Board of West Bengal have not banned the manufacturing, selling or dealing or using all types of fire work; but only few fire works have been picked up and prohibited which creates noise beyond permissible limit.
A citizen of this country must be allowed to live in a society which is peaceful, free from mechanical and artificial sounds which creates a tremendous health hazards and adverse effect on the citizens. Citizens have a right to live in a society, which is free from pollution. If pollutants are encouraged, in that event that would be the beginning of the end of the civilization.

It is contended that the parliament and/or Legislature in their wisdom, had not passed any law for putting such a restriction and in the absence of any specific provision in any law, the administration cannot do this thing through the order of the Court, this criticism have no force. If a citizen has a right if is also equally a duty on the part of this court to see that such rights are preserved and not allowed to be destroyed. Legislature may not rise to the occasion but that does not mean that court will keep its hand folded in the absence of any Legislative mandate. The courts are the custodian of rights of the citizens and if the court is of the view that citizens rights guaranteed under the Constitution of India are violated, the court is not powerless to end the wrong principle of Judicial activisms confers power upon the court to be active and not to remain inactive for the purpose of protecting rights, duties, and obligations of the people. Article 51A of the Constitution casts the fundamental duties on every citizen to protect and improve the natural environment including forest, lake river and wild life and to have compassion for living creatures. Tremendous sound is unacceptable not only to human being, but all the other animals. It is well known that for driving wild elephants from the localities and to save the locality from these wild elephants fire works are used.

Accordingly, tremendous sound beyond permissible limit is contrary to civilized order. Even the domesticated animals like pet dogs
are afraid of sound. There cannot be any contrary conclusion than to hold that artificial sound created by modern technology cannot be tolerated by the living creatures and it cannot be said to be good for the society. Further the Deepawali festival is a festival of light and not a festival of sound and accordingly it cannot be said that it is a part of the culture or part of any religious order to use noisy fire works for the purpose of celebrating such religious function. There are sound which create soothing effect on a living creature like vocal music or instrumental music, but noise created by machines is a product of the technological age. Music also generates some sort of sound and the use of fire works and microphones also generate sound but there is a gulf of difference between the two types of sounds. Sound created by music or instrumental music is soothing for the human being but not a tremendous sound created by use of microphones and/or fire works which create sound and results in a serious impact on health which is a nuisance and punishable under the law."

Regarding the matter of ambient and impulsive noise the Honourable Court had observed on the question of ambient and impulsive noise is concerned much have been argued at length, and it was pointed out that the impulsive noise is more tolerable and bearable and or less injurious or harmful than ambient noise. This question has to be decided in the state of affair existing in our country particularly in the cities and metropolis of India and its suburbs. The ambient noise generated by vehicular traffics by use of air or electric horn, condition of the bad roads use of generator noise creates a serious impact in raising the ambient noise level to an alarming extent and during the Kalipuja, Deepawali, which are the festivals of light and not of sound, the crackers are burst in millions simultaneously and continuously all over
the country, in that event because of the manner in which crackers are burst, it cannot be said that it is mere impulsive or in other words, it no longer remains as a sudden sound. During these festivals the use of crackers no longer remains as an impulsive sound but merges and becomes an ambient and/or continuous sound at a high pitch hour after hour, in the Indian context, and behaviour it can be said that the expression of ambient noise and impulsive noise losses its character and significance. One thing is clear that the pollution control Board fixed 75 to 40 dB as a higher noise level for different areas for the use of microphone over and above the ambient noise level from other sources in the city.

It was also observed by the Honourable High Court in this case, "The war of decibels has started all over the world. In India there are two weapons for fighting against the decibel. One weapon is pollution and the other weapon is provided in our Constitution in Article 19(1)(a). In other countries excepting in United States they have no such constitutional arms to end the wrong except by specific legislation. In such a war all concern including this court have their respective role to play.

Under our constitution, people have a right to sleep and leisure. Disruption or disturbance in sleep creates mental stress, deficient in working efficiency and other things."

And accordingly the court directed the West Bengal Pollution Control Board with the expert committee already appointed to take a decision regarding the sound level of fire works after giving hearing to the applicants namely Mohan fire works and Burrabazar Fire works Dealers Association and it was also held that until any decision of W.B.
Pollution Control Board regarding this matter the existing state of affairs would prevail.

In the case Mohan Fireworks & Air vs State of West Bengal and others

Judgement:

The petitioners who are manufacturers of various types of fire works, filed this writ application questioning a notification dated 3.10.1997 as contained in Annexure 'L' to the writ application whereby and where under the maximum permissible noise level of the fire works at the time of bursting was placed up to 90 Db(A) impulse noise at 5 meters from the source. It has also sought for an order permitting them to sell and / or dispose of the existing stock of fire-works.

Pursuant to or in furtherance of the directions issued in the Om Birangana Religious Society vs State of West Bengal & others and also in Burrabazar Fire works dealers Association & others vs commissioner of police case the impugned notification was issued by the west Bengal pollution control Board in exercise of its power conferred upon it under Air Prevention & Control of Pollution Act 1981 and Environmental (Protection) Act 1986 and in terms of the order passed by this Court in the aforementioned cases.

In the said application the petitioners and others questioned the authority of the West Bengal Pollution Control Board as also Commissioner of police to impose any ban on manufacturers, sell or use of certain items of fireworks relying on or on the basis of the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The said matters were disposed of by a judgement of a

2. 1. Cal L/T 1993 HC 76
Division Bench of this Court in Burrabazar Fire Works Dealers Association & Others. The Commissioner of Police, Calcutta & others the Court lamented on the role of the State Pollution Control Board in fixing the limit in view of the fact that sound pollution was a global problem and keeping in view its earlier decision in on Birangana Religious Society v. State of west Bengal, the Court had directed it to fix up appropriate noise level so that the citizen's right to sleep, right to speak, right to read, right to transit, right to think are not forcibly taken away by the pollutants.

The Court on receipt of the views of the expert observed that right of trade and business could not be made absolute since unrestricted right has not been contemplated under Article 19(1)(g) of the constitution of India.

The petitioners since aggrieved by the order of the Hon'ble Court preferred a special leave petition before the Apex Court, which however stood dismissed after giving a direction.

Pursuant to the aforementioned direction of this Court, a meeting had been held on 30.9.97 where in the special officers appointed by the Court, Dr. Abirlal Mukherjee and Sri Gitanath Ganguly, authorities of the West Bengal Pollution Control Board and one Professor from Kalyani University apart from four submissions on behalf of the manufacturers/dealers of Fire works had been placed before the said Committee.

The Committee took into consideration the aforementioned Division Bench decision of this court as also a decision of Samaresh Benerjee, J. and made certain recommendation after giving an opportunity of hearing to all concerned in terms of the aforementioned order and upon taking into consideration various papers.
In this Case the following decision is given by the Honourable High Court which runs as follows:

In fine, considering the deposition of the Burrobazar Fire works Dealers Association and the facts stated above and other records kept and maintained in the Board, whether ecological balance has to be maintained, we recommend that all fireworks such as chocolate Bomb, Chain crackers, koose Crackers, Kali patka, Dodoma, Seven Shorts, Rocket Bomb and similar other noise making crackers by any name should not be allowed to be used or sold in the State of West Bengal because all such fireworks are creating more then 90 db(A) definitely increase the ambient noise level more then the acceptable norms fixed under the Environment (Protection) Act, 1986 and Air (Prevention & Control of Pollution ) Act, 1981.

The questions that formulated for decision of the Court are as to whether a ban could be imposed on fireworks as prescribed by the west Bengal Pollution control Board, whether ecological balance has to be maintained, whether the power has been enshrined under the Constitution to interpret it by the Supreme Court and the High Court, whether the person overreaching or overriding the right of others & the responsible reasonable restriction on such right could be made by the legislature and whether the principle of res judicata applies.

It was also held “Environmental Law had to be enacted the parliament keeping in view the Stockholm Declaration, 1972. Sundarbans protocol had also come into being. It is now accepted by all concerned that at all costs the ecological balance has to be maintained. Strict views of maintenance of environment both biotic and non-biotic is a must. Lack of care on the part of the human beings in maintaining cleanliness and maintenance of purity of water and flora and fauna as
also disappearance of forest, appearance of deserts result in floods etc. is now well known.

The Apex Court in various judgements upon considering the provisions of the International Conventions and Covenants made laws. By way of example it may be mentioned that in D.K. Basu v. State of West Bengal1, the Apex Court had laid down the norms to be followed while arresting a person and the rights of the person so arrested.

The Constitution has conferred upon the Supreme Court and the High Court the power to interpret the Constitution as also the statutes. Judge made law has come to stay. It is, therefore not correct to contend that this Court erred in issuing the aforementioned directions pursuant where to the impugned order has been issued.

It may be true that while laying down the standard for the quality of air it might not have consulted with the Central Board but it had issued the impugned order in terms of the directions issued by this Court, and thus it cannot be said that the state Board had absolutely no power whatsoever in this regard, Furthermore, the petitioner and the Association of Manufacturer of Fireworks have submitted themselves to the Jurisdiction of the State Pollution Control Board and made known their view points.

Furthermore the principles of *res judicata* in this case, the decision of this Court has been upheld by the Supreme Court specially. The decision of this court, therefore, merged with the order of the Supreme Court and thus, it is not possible for this court to take a different view from what has been expressed in Barabazar Fire Works.”

1. AIR 1997 SC 3017
In Chairman Guruvayur Devaswom Managing Committee, Guruvayur vs Superintendent of Police, Thrissur and another, the Chairman of the Guruvayur fills writ appeal. The fact of the case is that the Guruvayur temple attracts many devotees and pilgrims throughout the year. The crowd of devotees is so much that the temple authorities have always to keep a watch to see the discipline is maintained in and around the premises of the temple. During the course of the year, a large number of festivals are also being conducted in the temple. It attracts not only the devotees from Kerala, but from all over India. During the Sabarimala season, approximately from the month of November to the end of January, there is a continuous flow of devotees. The temple authorities have an upheaval task of controlling the crowd and issuing direction to pilgrim with respect to the darshan in the temple.

As per the decision of the managing Committee, loudspeakers were installed in the temple premises. Through these loudspeakers, everyday in the early morning, devotional songs were being transmitted. Further, inside the temple premises, some loudspeakers were installed in order to give directions to the pilgrims as well as to the members of the Devaswom staff. The crowd is always so large that instructions will have to be issued as to how the devotees should conduct themselves in the temple premises. One may also hear the announcements of missing children. Over and above these, during festival season as well as Sabarimala season, the authorities used to install loudspeakers in a radius of nearly 1 km from the temple. This is because, the crowd will not only be present in the temple premises but they will be spread over the above area. This necessitated the installation of loudspeakers as stated earlier in a radius of about 1 km. These loudspeakers were horn

2. AIR 1998 Ker 122
type loudspeakers. The temple authorities were following this system for a long period.

During the month of November, 1996 respondents police officer in the State directed the Managing Committee to remove the horn type speakers otherwise the administration would be compelled to remove the loudspeakers from there. An original writ petition Vide No 19147 of 1996 before the Kerala High Court Seeking a writ of Mandamus or Other appropriate order or direction restraining the respondents from removing the loudspeakers fixed at Guruvayur Sree Krishna Temple and around the temple during the sabarimala festival season and to render such other orders as this Court may deem fit and necessary.

In this original writ petition the respondent revealed that horn type loudspeakers are being made use of in the Guruvayur Temple. According to the statement, this type of loudspeakers caused irreparable damage to the ears and that these loudspeakers were installed without obtaining sanction from any competent authority. It was also contended on behalf of the respondent that a complaint was received from the District Secretary of sound service Association of Kerala on 21st November, 1996 requesting for taking action against the Devaswom for using the horn type mikes outside Sree Krishna Temple. Enquiries were made and it was revealed that reflex type horns were made use of from East Nada to Manjulal and from other sides of the Temple. The learned single Judge in this original writ petition after hearing the parties dismissed original petition by judgment dated 13th December 1996 and had given judgement with five direction in this regard. The Judgement is as follows:
"In temples, churches and mosques also, box type sound amplifier alone should be permitted. The use must be adjusted in such a way that sound will not go beyond the boundary of their premises. The call for prayer (Azan) in the mosque is only of one minutes duration and as such this restriction may be relaxed in that case".

Against the above judgment this writ appeal was filed before the division bench comprised of Mr. U.P. Sing C.J. and Mr. S Sankarsubban J. in this writ appeal the Honourable Judges totally relied on the report of the Kerala State Pollution Control Board before which the Guruvayur Devaswom had itself approached. The Kerala Pollution Control Board has been impleaded as party in this case and accordingly it had to file a report before the Court. The report is as follows:

"The Devaswom is using PA System for broadcasting devotional song and announcements. The devotional song (Narayaneeyam) is broadcast, every day from 2.30 hrs to 4.30 hrs. The audibility of the devotional song is limited within the temple area and it is serving the purpose of a wake up call for devotees who have to attend morning puja.

Other than broadcasting the devotional songs the PA system is used only for very essential announcements about missing persons, lost wallets etc. Such announcements are infrequent. During Sabarimala season, there will be announcement regarding missing persons or lost wallet etc. and additionally there will be repeat broadcasts, in different language of announcements meant to guide devotee from outsiders the state. These announcements will continue into the night hours as long as there is arrival of fresh batches of pilgrims. According to Devaswom authorities during the sabarimala season they hire additional loudspeakers (horn type) from outside agencies. These loudspeakers will be placed in the open by the roadside, at about 3 m above ground level.
This expanded coverage is provided for a period of about two months ending with the Makara Vilakku. The network will then be extended up to KSRTC, Municipal and Tourist Bus Stands. There has been no complaint by devotees against noise from loudspeakers. The final report filed by the Board was very specific to Guruvayur and was based on field observations. The use of horn type loudspeaker is preferable for public announcement and speeches especially in open areas, for the following reasons:

A cone type loudspeaker (otherwise known as box type loudspeaker) is able to faithfully reproduce sound in a very wide range of frequencies. In other words it can reproduce very shrill (high frequency) to very high bass (low frequency) sounds. The efficiency of a horn type loudspeaker, on the other hand, is limited to human speech frequencies. Therefore a horn type loudspeaker is more preferable for human speech amplification.

Box type loudspeakers are not suitable for prolonged use in the open as they do not withstand the vagaries of nature. The horn type speakers are rugged in construction and are therefore better suited for outside use. Horn type loudspeaker is more directional and therefore the sound can be better focused towards the intended audience.

Cone/box type loudspeakers are suitable for use in areas such as music/conference halls and theatres where the audibility can be restricted to a confined area or audience and where we require faithful reproduction of a wide range of frequencies."

It is already stated that learned Judges wholly relied on the report of Kerala Pollution Control Board as they stated their Judgment, "The only restriction stated is that these loudspeaker should be maintained at
a height of 3 meters above the ground level. Thus from the above reports, it is clear that there will be no noise pollution in using the horn type loudspeakers so far as Guruvayur temple premises is concerned. The Honourable High Court quashed its earlier order and allowed the Guruvayur Devaswom to use horn type amplifiers in and around the Shree Krishna Temple premises, as required by them.

In the case Moulana Mufti Syed Md. Noorler Rehman Barkati and others Vs State of West Bengal, it was held that Azan is certainly an essential part of Islam but use of microphone and loud-speakers are not an essential and an integral part. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only source of pollution but it is also a source, which causes several health hazards. Traditionally and according to the religious order. Azan has to be given by the Imam or the person in charge of the Mosques through their own voice; this is sanctioned under the religious order. Azan is not a form of propagation but it an essential and integral part of religion to meet at the prayer from a call being made through Azan.

The petitioner of this case was Moulana Mufti Syed Md. Noorur Rehman Barkati, Imam and Khatib, Tipu sultan Shahi Masjid and eight others for a declaration that Rule 3 of the Environmental (Protection) Rules 1986 vis-a-vis Schedule III of the said Rule do not apply in case of Mosques more particularly at the time of call of Azan from the Mosques and for the further declaration that schedule-III of the Environmental (Protection) Rules, 1986 is ultra vires Article 14 and 25 of the constitution. The petitioner also prayed for withdrawal of all conditions and restrictions which were notified by the police and other

1. AIR 1999 Cal 15
authorities pursuant to the order passed in the case of Om Birangana Religious Society Vs State,\(^1\) where it was decided that there will be no user of any microphones between 9 P.M. to 7 A.M. except by the public authorities for discharging their emergent public duties and/or obligations and that the West Bengal Pollution Control Board was directed to maintain noise level registrar indicating the level of noise which could permitted by use of microphones on any occasion or in any area. The petitioner had also contended that Namaz is the second pillar of Islam and occupies a permanent position among the practical duties of the Muslims. Muslims offer obligatory prayers in congregation in Mosques five times a day and offer prayer in common (Jammat) to isolated prayers. Azan is essential for all obligatory prayers and is called by Muezzin in loud voice to summon all believers in Islam prayers.

It was further submitted on behalf of the petitioners that when Azan was introduced by prophet Muhammad (S.A.W) it was called by a person from mosque in loud voice but by reason of passage of time it, was felt that a system was required to be introduced to invite the Believers in Islam to the congregational prayers by calling Azan through any instrument because of increase in population industries and environmental changes it was not possible to reach the voice of Azan to the Believers of Islam. On this ground it was submitted that Azan was and/or is called through an electrical loudspeakers and/or microphones for the purpose of Azan is a part of the religious right guaranteed under Art 25 of the Constitution. It was further submitted that the right to perform religious practice might be acquired also by custom. When so acquired, it would have the protection of Art. 25 in respect of all religious rites, practices, observances, ceremonies and functions which

1. (1996) 100 CWN 617
are customarily performed by the members of the petitioners community and not according to the version of the person who opposes. In order to justify the claim for using microphone it was submitted that it was the duty of the citizens also to have a degree of tolerance, patience for the purpose of respecting other religion and custom, and also contended that the principle laid down in Om Birangana’s case, was made applicable to all religions all functions, private or public, public meetings and so on and not confined to one or two religions.

The Honourable High Court after hearing the submissions and contentions and considering in full length the earlier judgments given by this court in Om Birangana Religious Society Vs State, the Burrabazar fire works and Mohan fire works cases had passed the order, runs as follows:

“... The contention that use of microphone is a practice developed by someone not by the prophet or his main disciples and which was not there in the past and that the microphone is of recent origin and accordingly it could not be said that the use of microphone and loudspeaker are essential and integral part of the religion. Azan is certainly an essential and integral part of Islam but use of microphone and loudspeakers are not an essential and an integral part thereof. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source, which cause several health hazardous. Traditionally and according to the religious order, Azan has to be given by the Imam or the person in charge of the Mosques through their own voice; this is sanctioned under the religious order. Right to religion by any stretch of imagination cannot be held, that in order to practice, profess and propagate, microphone has become an essential part of the religion.
Azan is not a form of propagation but is an essential and integral part of religion to meet at the payer from a call being made through Azan .... . Further use of microphone is not an integral of Azan and/or necessary for making Azan effective. Azan is there and will be there. But simply because microphone has been invented and ultimately it is found that it is one of the major source of sound pollution and it affects the fundamental right of the citizen under Art 19(1) of the Constitution and making the citizen captive listeners, suspending all their fundamental and legal rights, none can claim an absolute right to suspend other rights or it can disturb other basic human rights and fundamental rights to sleep and leisure. The argument that the Environmental (Protection) Act, Rules and schedule there in are ultra vires under Art 19(1) (a) of the Constitution and making the citizen captive listeners, suspending all their fundamental and legal rights. The argument that Environmental (Protection) Act, Rules and the schedules therein are ultra vires under Art 14 & 25 is wholly misconceived as it had not resulted any discrimination and so far as sound pollution is concerned, citizens have a right to be protected against excessive sound under Article 19(1)(a) of the Constitution. The restrictions on the use of microphone as imposed by the Court, Central Pollution Control Board and the State Pollution Control Board has to be carried out by all concern at any cost. Simply because no such formal restrictions has been imposed in other parts of India and the fundamental rights under Article 19(1)(a) is enforced strictly in the State of West Bengal and it is not enforced in other parts of India that does not amount to any case of any discrimination. Accordingly, in our view, the petition is misconceived and has no merit at all. Accordingly the petition is dismissed.”
The Court lamented upon the conduct of some person who failed to act as per the direction and order of this Honourable Court given on 1st April, 1996 regarding the case of microphone. It was further held. “It is made clear from the date of this order if anybody is found violating the restriction imposed on microphone/loud-speaker, the Police Authorities are hereby directed to immediately seize and confiscate and the microphones from whatever place it would be found and reported it to the Court for taking drastic action against the violates who are violating willfully and deliberately. The officer-in-charge of all police stations in State of West Bengal are directed to keep a watch on all the Mosques in the State of West Bengal to find out whether any of the Mosques are using Microphone in the early hours before 7 A.M. and that they are maintaining the decibel limits available to them on the basis of the situation of the Mosques and if any infraction is made they should take steps as directed in this order. Further all the superintendent of Police of all the Districts and the commissioner of Police, Calcutta are also directed to call for the reports from each and every police station about the state of affairs in respect of the Mosques situated within the jurisdiction of each and every police station and submit a report to this Court within two weeks. The Pollution Control Board, if they receive any complaint against any such Mosque, should immediately bring to the notice of the court for drastic action according to the law....

In the case Ganatantric Nagarik Samity-Vs-state of W.B.¹ On 20th April, 1998 on mentioning the court’s attention was drawn to a Newspaper Publication in the Daily ‘Aajkal’ and the Daily ‘Telegraph’

1. W.P. No. 12902 (W) of 1997, 1999 (2) CLJ
in its issue dated 20th April, 1998 to the extent that a man was killed by 'runway cracker' in course of fireworks displayed by the Army personnel as a part of cultural programme at Bengal Rowing club at Rabindra Sarabar. The Court directed the Pollution control Board to make an enquiry into the matter. The police was also directed to make an enquiry and submit a Report before this court. The pollution Control Board submitted a Report before this court on 6th May, 1998.

Army Authority with Mr. S.C.Bose Mr. P.C.Sen representing Bengal Rowing club Mr. Gita Nath Ganguly, special Officer, Mr. M.C. Das, learned Advocate for Pollution control Board sat together for the purpose of coming to a consensus about a proper solution. On behalf of the Major General OS Lohchab VSM General Officer Commanding, Head Quarter, Bengal Area, Indian Army has offered for acceptance by this Court a package.

Allowing the writ petition the Court,

Held: Considering the facts and circumstances of this case we direct the Army Authorities to extent the benefits as indicated in their letter dated 29th June 1998, which would be kept on record. The sum offered by Bengal Rowing Club is quite reasonable.

Mr. Advocate General expressed his satisfaction in the matter for a peaceful solution, criminal case should not continue. Accordingly for the purpose of upholding the basic structure of the constitution-social and economic justice should be extended to the people.

Considering the social, economic and other aspect of the matter and to overcome hardship we accept such offer and we direct that any prosecution should not be preceded any longer in respect of the persons concerned who have voluntarily offered their help. The learned
Magistrate of the concerned prosecution case is to act in terms of this order.

The sum of Rs. 12.50 Lacks so received by the family of Late Subra Jyoti Sengupta shall not be treated as income and no tax including income tax shall be leveled thereon.

Again the Court, considering the facts, held it and circumstances of the case we direct the Army Authorities to extend the benefits as indicated in their letter dated 29th June, 1998 which would be kept on Record. So far as the sum offered by Bengal Rowing Club is concerned the same is quite reasonable. The Bengal Rowing Club is directed to pay the said sum by two cheques one in the name of the widow Smt. Dipanitya Sengupta for a sum of Rs. 8,50,000/- and the other in the name of the mother of the deceased Smt. Swapna Sengupta Rs. 4 lacks. Initially no criminal case was started by the Police and pursuant to the directions given by this Court a case was started by the Calcutta Police.

We have also heard learned Advocate General on this court who appeared in the matter pursuant to the notice given by this court and after considering the offers made by the Army Authorities as well as Bengal Rowing Club, Mr. Advocate General expressed his satisfaction in the matter for a peaceful solution which will help the family of the deceased by extending such help which was highly appreciated by him.

If a criminal case is allowed to continue it is not known what will ultimately happen. When the parties feel themselves responsible for the death of Subra Jyoti Sengupta had extended their hands to help the family of the deceased in order to overcome the difficulty to the satisfaction of this Court and the family members have accepted such offer we are of the view that the criminal case should not continue any longer against them. If a criminal prosecution is allowed to continue in
the usual way in that event the family will not get any benefit or assistance. Accordingly for the purpose of upholding the basic structure of the constitution-social and economic justice should be extended to the people and in the instant case life of Subra Jyoti I could not be brought back and the family will be in distress and the offers made by the parties will in view mitigate the hardship and distress condition due to the death of Subra Jyoti Sengupta. It would be a case of rehabilitory justice.

Accordingly considering the social, economic and other aspect of the matter and to overcome the hardship with the help and assistance given by the parties and for the ends of justice we accept such offer and we direct that any prosecution should not be proceeded any longer in respect of the persons concerned who have voluntarily offered their help the satisfaction of the Court. The Learned Magistrate of the concerned prosecution case is to act in terms of this order. Bengal Rowing club shall hand over the cheques by next Monday (20.7.98) and the Army Authority will accept the widow when she will intimate to them about her joining.

We place it on Record that this order is passed with the help and co-operation of the parties and this will set an example and will inspire the other cases to follow.

In the case Church of God (Full Gospel) in India VS K.K.R. Majestic Colony Welfare Association and Others\(^1\) the appeal by special leave is filled before the Supreme Court against the judgement and order dated 19.4.1999 passed by the High Court of Judicature at Madras in Criminal O.P. No. 61 of 1998. The appellant is the Church of God ("Full Gospel Church" for short) located at K.K.R. Nagar. Madhavran High

---

1. AIR 2000 SC 2773
Road, Chennai. It had a prayer hall for the Pentecostal Christians and is provided with musical instruments such as drum set, triple gango, guitar etc. KKR Majestic Colony Welfare Association made a complaint on 15.5.1996 to the Tamilnadu Pollution Control Board stating there in that prayers in the Church were recited by using loudspeakers, drums and other sound producing instruments which caused noise pollution thereby disturbing and causing nuisance to the normal day life of the residents of the said colony. Complaints were also made to the Superintendent of police and the Inspector of police. Thereafter the said welfare Association filed Criminal O.P.No. 61 of 1998 before the High Court of Madras for a direction to Superintendent of police and inspector of police to take action and refrain the church from practicing its religious beliefs.

The learned Judge referred to the decision of the High Court in Appā Rao, M.S. Government of Tamilandu1, where certain guidelines have been laid down for controlling the noise pollution. In Appa Rao’s Case after considering the contentions raised by the parties and decisions cited therein and also to the provisions of sections 41 and 71(a) of the Madras city police Act. 1888 and section 10 of the Madras Town Nuisance Act, 1989 has issued direction to the Governments for controlling the noise pollution and for the use of amplifiers and loudspeakers. In the said case, the court has observed that the grievances of the petitioners who have complained with regard to the noise pollution were fully justified and the authorities concerned were turning or made to turn by the higher powers a Nelson’s eye to the violation of rules and regulations in these matters. The court also considered copy of an article which appeared in the August, 1982 issue of ‘Science’ ‘Today’ and a copy of the ICMR Bulletin of July, 1979 containing a
study no Noise Pollution in South India wherein it is pointed out that noise pollution will lead to serious nervous disorders, emotional tension leading to high blood-pressure, cardiovascular diseases. Increasing in cholesterol level resulting in heart attack and strokes and even damage to foetus.

The learned single Judge also referred to other decisions and directed the said superintendent of police and inspector of police to follow the guidelines issued in Appa Rao’s case¹ and to take necessary steps to bring down the noise level to the vehicles, which make noise, and also by making the Church to keep their speakers at a lower level. He further held that the Survey report submitted by the Board would go to show that the church was not the sole contributor of the noise and it appeared that the interference of noise was also due to playing of vehicles. The learned Judge pointed out that there was nothing of malice and malicious wish to cause hindrance to the free practice of religious faith of the Church and if the noise created by the church exceeds the permissible decibels then it has to be abated. Aggrieved by the said order, this appeal is filed by the Church.

Mr. G. Krishnan, Learned Senior Counsel appearing on behalf of appellant contended that the High Court has failed to note that the two survey reports of the pollution control Board clearly attributed the noise pollution in the area in question to the vehicular traffic and not to any of the activities of the appellant – church and, therefore direction issued in respect of controlling the noise ought not to have been extended in respect of the appellant-church; that the High Court has overlooked that the right to profess and practice Christianity is protected under Articles 25 and 26 of the constitution of India which cannot be dislodged by

---

directing the authorities to have a check on the appellant-Church: and that the judgement relied upon by the High Court in Appa Roa's case did not empower the authorities to interfere with the religious practices of any community.

The learned counsel appearing on behalf of the respondents contended that the appellant – church has deliberately tried to give religious colour to this cause of action as respondent No. 1 – Welfare Association is consisting of members belonging to all religious as found by the High Court. It is contended that even if the contention of the appellant-Church that the noise created by it is within the prescribed limit is taken as it is the order passed by the High Court will not in any way prejudice the right of religious practice of appellant because the order of the High Court is only with regard to reducing the noise pollution in that area. It is further contended that the High Court can pass orders to protect and preserve a very fundamental right of citizen under Article 19(1)(a) of the Constitution of India. He relied upon the judgement of Calcutta High Court in Om Biranguna Religious Society v. State wherein the Court dealt with a similar matter. The questions posed by the Court for considering were-whether the public are captive audience or listener when permission is given for using loud speakers in public and the person who is otherwise unwilling to bear the sound and / or the music or the communication made by the loud-speakers, 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? Even if a citizen is ill and even if such a sound may create adverse effect on his physical and mental condition. Yet he is made a captive audience to listen.

1. (1995) I Mad LW 319
2. (1996) 100 Cal WN 617
The High Court held that:

"It cannot be said that the religious teachers or the spiritual leaders who had laid down these tents, had any way desired the use of microphones as a means of performance of religion. Undoubtedly. One can practice, profess and propagate 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 provisions 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) of the Constitution. 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".

The supreme court considering all the matter before it passed the judgement as follows: "In our view, the contentions raised by the learned counsel or the appellant deserves to be rejected because the direction given by the learned judge to the authorities is only to follow the guidelines laid down in Appa Rao's case Decided by the Division Bench of the same High Court on the basis of the Madras Towards Nuisance Act 1889. It is also in conformity with the Noise Pollution Regulation and with the Noise Pollution (Regulation and Control) Rules, 2000 framed by the Central Government under provisions of the Environment protection) Act. 1986 read with Rule 5 of the Environment (Protection) Rules, 1986. Rule 3 of the Noise Pollution (Regulation and Controls) Rules, 2000 provides for ambient air quality standards in respect of noise for different areas/ zones as specified in the schedule annexed to the rule. Aforesaid rules are unambiguous, clear and speak for themselves, considering the same, it cannot be said that the directions issued by the High Court are in any manner illegal or erroneous."
In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to “public order, morality and health are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by bearing of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observance made by the constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in Acharya Maharajashri Narendra Prasadji Anand Prasadji Maharaj v. The state of Gujarat. After considering the various contentions, the Court observed, “no rights in an organised society can be absolute. Enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony the state has to step in to set right the imbalance between competing interests”. The court also observed “a particular fundamental right cannot exist in isolation in a water tight compartment. On Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental right by others also with reasonable and valid exercise of power by the state in the light of the Directive principles in the interests of social welfare as a whole”.

The questions involved in this appeal are that in a country having multiple religious and numerous communities or sects, whether a particular community or sect or that community can claim right to add to noise pollution on the ground of religion? Where beating of drums or reciting of prayers so as to disturb the peace or tranquility of neighborhood by disturbing the peace of others nor does it preach that

they should be through voice amplifiers or beating of drums. In our view, 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 person carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighborhood are also entitled. It should not be forgotten that young babies in the neighborhood 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 their being any unnecessary disturbance by the neighbors. Similarly old and infirm are entitled to enjoy reasonable quietness during their leisure hours without they're being any nuisances of noise pollution. Aged, sick people affected 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.

Under the Environment (Protection) Act, 1986, rules for noise pollution level are of noise in residential, commercial, industrial areas or silence zone. The question is—where the appellant can be permitted to violate the said provisions and add to the noise pollution? In our view, to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization etc, and is having many evil effects including danger to the health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problem, allergy, distraction, mental stress and annoyance etc. This affect animals like. The extent further, it is to because of urbanization the noise pollution may in some area of a city,
town might be exceeding permissible limits-prescribed under the rules, but that would not be a ground for permitting others to increase the same by beating of drums or by such other musical instruments and therefore, rules prescribing reasonable restrictions including the rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisance Act, 1889 and also the Noise pollution (Regulations and control ) Rules, 2000 are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the implementation Authorities on the Rules or its duty to implement the same. Noise polluting activities which are rampant and yet for one reason or the other, the aforesaid Rules or the rules framed under various state Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same.

In the result, the appeal is dismissed”.

Ultimately, in this way the Supreme Court through its verdict given its nod in favour of the view expressed by the Calcutta High Court in Burrabazar Fire Works Case.

In Free Legal Aid Cell Shri Sugan Chand Aggarwal @ Bhagatji Vs Govt of NCT of Delhi & others¹, a petition is filed on behalf of an association of public activities in public interest. Main grievance in this petition is that as a result of display of fire works use there of during Festivals and marriages, adults as well as children suffer physical and mental hazard. Noise pollution is caused due to use of high-sounding explosive fire works and other blaring sound productive devices and the effect of the same results in pollution in sound, which is hazardous. It is

¹ AIR 2001 Del 455
also contended that because of indiscriminate use of loudspeakers, noise pollution has become a routine affair affecting mental as well as physical health of citizens. There is noise pollution not WITHSTANDING specific instructions issued by the Deputy Commissioner of Police, Headquarter Delhi. It is highlighted that manner in which sound pollution affects on the health of the people, is a cause for great concern.

In this case it was held by the court that the effect of noise on health is a matter, which has yet not received full attention of our judiciary, which it deserves. Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant, causes nuisance and affects the health of a person and would therefore offend Art 21, if it exceeds a reasonable limit. It was also held that adopting certain measures could curb noise pollution. Environment eco-friendly technology should be adopted. Machinery should be designed and manufactured in such a way that it should not create sounder than allowable noise limits. Roads should be made sound proof; trees should be planted on both sides of roads and outside the big factories and industries. Public awareness among masses should be created through seminars; conference and the evil effects of noise pollution should be highlighted. Houses of God should be kept peaceful and noise free as it is rightly said that God is not deaf. Flights of aeroplanes should be also planned to curb noise. Noise code regulating all aspects of noise pollution may be enacted. As the problem of noise pollution has already crossed the danger point and noise like smog is threatening as a slow agent of death, immediate measures are needed to be taken in this regard.
In the case Sayeed Maqsood Ali Vs The State of M.P.\textsuperscript{1}, the house of the petitioner a cardiac patient is situate near Eye Hospital and by the side of Dharmashala. In the vicinity there are Hospitals and educational institutions and Government Higher Secondary School. The Dharmashala run by the respondent which is situate nearby, accommodates various categories of people and many of religious functions are organised throughout the year. The Dharmashala also is given on rent for the purpose of holding marriages and other functions. In the Dharmashala loudspeakers are used and where music is played at a very high pitch creating disturbance to the petitioner and other persons residing in the said locality. The petitioner pleaded in the petition that due to the act of respondent there is noise pollution and the petitioners health is affected and though he has submitted various complaints and approached the authorities for stopping the said nuisance it has fallen in deaf ears.

It was contended on behalf of respondent that the affairs of Sindhi Dharmashala, Jabalpur are managed by ‘Sindhi Sewak sabha’ an Association of Sindhi Community, Jabalpur. It is pleaded that Dharmashala is provided free of charge to the Government when the occasion or situation so warrants. It was also contended that whenever Dharmashala is let out a condition is imposed that no loudspeaker etc. Will be played in the Dharmashala without the permission of the city Magistrate and at no point of time any one has been permitted to play the loudspeaker without the appropriate permission. Reference has been made to certain permission to show that the permissions are granted on certain stringent conditions. It has been set forth that the volume of loudspeaker does not exceed the permissible limit and hence, the petitioner cannot put the blame on the management of the Dharmashala.

\textsuperscript{1} AIR 2001 MP 220
On the other hand it is submitted by the petitioner that no institution or association has a right to affect the rights of an individual by creating noise, which is impermissible in law on any kind of garb or disguise. It is urged that though the authorities have issued permission from time to time they have not taken proper steps to see that whether the 'Rules' in vogue are followed in letter and spirit and whether a citizens right to live in peace and tranquility is affected or not. The grievance of the petitioner is that while granting permission the 'Rules' are given a go by and the instructions given by the collector is not kept in view. It is also urged that the Rules framed by the central Govt. have not at all kept in mind while issuing / granting permission. It was further claimed that in the name of religion or social function of cultural activity there could be no violation of the command of the rules.

In this case, after hearing both the parties, it was held by the High Court, "life is a glorious gift from God. It is the perfection of nature, a masterpiece of creation. It is majestic and sublime. Human being is the epitome of the infinite prowess of the divine designer. Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. It has been said 'life is action, the use of one's powers and powers one can use if he has real faith in life. The term 'life' as employed under Article 21 of the constitution of India does never mean a basic animal existence but conveys living of life with let most nobleness and human dignity - dignity that is an ideal worth fighting for and worth dying for. Life takes within its fold some of the finer graces of human civilization which makes life worth living.' Right to live in its ambit includes right to health and health gives a serene and halcyon signification to life. It has been said that preservation of health is a duty and as per Herbert
Spencer, "few seems conscious that there is such a thing as physical morality" while speaking about health thus spoke Izaak Walton ...’ for health is the second blessing that we mortals are capable if, a blessing that money cannot buy! Reverence for life is a fundamental principle of morality and a life without good health is denial of life. The human body is regarded as the house of creative intelligence. The health of an individual enhances the quality of the collective and in a welfare state it is the bounden obligation of the state to see the people remain in a healthy society. It is to be borne in mind that even in the international sphere emphasis is laid on proper health and a right is enshrined providing security against sickness and disablement under Article 25 of the Universal Declaration of Human Rights. I have adverted the health and life as in the case at hand this court is concerned with noise pollution, which causes many a serious disorders and creates a dent in the fabric of society. C.S. Kerse in his book ‘the law relating to noise’ has categorically stated that “noise is undoubtedly psychologically and physiologically harmful as an invisible and insidious form and once hearing has been damaged by noise it can scarcely ever be restored to wholeness. The learned author has also proceeded to state that noise causes loss of sleep, annoyance, and nervous tension, heart disease, migraine and gastro intestinal disorders.”

It was further observed by this court, “In view of the aforesaid enunciation of law there remains no scintilla of doubt that the authorities are required to carry the law in the field and see that there is no violation. It cannot be forgotten that excessive noise indubitably creates pollution. Every citizen is entitled under Art 21 of the constitution to live in a decent environment and has the right to sleep peacefully at night. Not for nothing it has been said sleep is the best cure for walking
troubles and the sleep of a labouring man is sweet. Sleep brings serenity.
It cannot be lost sight of that silence invigorates the mind, energies the
body and quiets the soul. That apart, a citizen can choose the solitude as
a companion. No one has a right to affect rights of others to have proper
sleep, peaceful living atmosphere and undisturbed thought. No citizen
can be compelled to suffer annoying effects of noise as that eventually
leads to many a malady which includes cardio vascular disturbance,
digestive disorders and neuron psychiatric disturbance . . . . At this
stage I may proceed to state that silent air is full of freshness. Silence
brings bliss, noise invites chaos. Diligent attempts are to be made to
curb noise starting from the street to stratosphere. The present
generation has to keep itself alive to the situation and build a healthy
society. It cannot afford to ponder like Hamlet 'to be or not to be' or
remain in a Parvati like situation 'Na jajau na tasthau'. The existing
generation must remind themselves the message of a latin Poet “Death
plucks my ear and says, live I am coming”. Positive action is the call of
the day, for the live is to act.”

After these observations and remarks the Hon’ble Court directed
the respondent not to let out the premises to such persons or associations
or organizations who have not obtained permission from the competent
authority with regard to use of loud speakers/Public address systems.

5.4 CONCLUSION :-

From the above discussion on the various case discussions, the
positive outlook of the judiciary reflects to fight with the menace of
noise pollution Judiciary really is performing the role of reformer,
promoter and harbinger of social good, common welfare and social
justice. Judicial response to fulfill the changing needs of the changing society is really appreciable and quite appraisable one. The Judiciary has made itself committed to provide quality environment to the people and accordingly given paramount importance to 'health' and 'ecology' and this attitude of the Judiciary reflected to detect the flaws and lacuna of the various legislations related with environment. The way the Indian Judiciary discussed and interpreted problem of noise in the various cases, really will help the researchers, legal practitioners, experts and also the general people in their study on noise. The judiciary expressed its anger on the process of making captive listeners and given the status of the fundamental right to the right to be let alone, right to have sound sleep, right against aural aggression etc.

But whatever the assertions have made here those are only related with the superior judiciary and not said for the whole judicial system in India. Due to the lack of a central legislation on noise pollution and of a central legislation on noise pollution and of a definite policy on the said subject often creates problem to the court and the judges to response to the problem of noise pollution property lack of awareness and sensitization of the Judges on the subject is also responsible for this position. Last but not least the study suggests for the creation of the special courts on environmental matters and about the special training for the judge who will be recruited as a judge of this special courts.