

[MANU/WB/0211/1998](#)

Equivalent Citation: AIR1999Cal15

IN THE HIGH COURT OF CALCUTTA

W.P. No. 8146(W) of 1997

Decided On: 04.03.1998

Appellants: **Moulana Mufti Syed Md. Noorur Rehman Barkati and Ors.**

Vs.

Respondent: **State of West Bengal and Ors.**

Hon'ble Judges:

[Bhagabati Prosad Banerjee](#) and [Ronojit Kumar Mitra](#), JJ.

Counsels:

M.C. Das and Mukherjee, Advs. for Pollution Control Board

For Appellant/Petitioner/Plaintiff: [Kalyan Bandopadhyay](#) and [Kishore Dutt](#), Advs.

For Respondents/Defendant: Roy Choudhury, Adv.

Subject: Constitution

Catch Words

Chief Justice of India, Constitution of India, Contempt, Contempt of Court, Convention, Decency, Decent Environment, Definition, Discharge, Discrimination, Educational Institution, Emergency, Environmental Protection, Freedom of Conscience, Freedom of Religion, Freedom of Speech, Fundamental Duties, Fundamental Freedom, Fundamental Right, Guarantee, Human Right, Incitement to an Offence, Judicial Activism, Jurisdiction, Legislation, Legitimate Expectation, Manage Religious Affair, No Inherent Right, Parliament, Particular Religion, Privilege, Propagation of Religion, Reasonable Restriction, Reasonableness, Regulation, Religious Affair, Religious Denomination, Religious Endowment, Religious Freedom, Right to Life, Right to Live, Right to Use, Secularism, Special Leave Petition, Subject to the Provision, Summon, Tender, Wild Life

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Articles 14, 19(1) and 25; Environmental (Protection) Act, 1986 - Section 3

Cases Referred:

Om Birangana Religious Society v. State, 100 CWN 617; Burrabazar Fire Works Dealers Association v. The Commissioner of Police, Calcutta, 1997 (2) CLJ 468; Coverjee v. Excise Commissioner and the Chief Commissioner, Ajmer, AIR 1954 SC 220; R. v. Secretary of State for Transport ex. p. Richmond upon Thames London Borough Council and others (No. 4), (1996) 4 All ER 903; Powell and Rayner v. U.K. (European Court of Human Rights, 1990, Series A No. 1724 at 18; Union of India v. Raghbir Singh, AIR 1989 SC 1933; Pomal Kanji Govindji v. Vrajlal Karsandas Purohit, AIR 1989 SC 436; M.C. Mehta v. Union of India, AIR 1987 SC 1086; National Workers' Union v. P.R. Ramkrishnan, AIR 1983 SC 75, 1983 Tax LR 2407; Durgah Committee v. Hussain, AIR 1961 SC 1402; Hindu Religious Endowment v. Laxmindra Thirathaswamiar, AIR 1954 SC 282

Case Note:

Constitution – religion – Articles 14, 19 and 25 of Constitution of India and Rule 3 of Environment (Protection) Rules, 1986 – petitioners filed application for declaration that Rule 3 did not apply to case of mosques at time of call of 'azan' from mosques and Schedule III of Rules ultra vires of Articles 14 and 25 – petitioners contend that 'azan' was essential for all obligatory prayers and called by 'muezzin' in loud voice to summon all believers in 'Islam' to prayers – according to religious order 'azan' had to be given by 'Imam' or person in-charge of mosques through their own voice and this was sanctioned under religious order – right to religion cannot be held that in order to practice or propagate religion microphone had become essential part of religion – Schedule III of Rules is ultra vires under Articles 14 and 25 was wholly misconceived as it had not resulted in any discrimination and as far as sound pollution was concerned citizens had right to be protected against excessive sound under Article 19 (1) (a) – petition dismissed.

JUDGMENT

Bhagabati Prosad Banerjee, J.

1. This matter was assigned by the Hon'ble Chief-Justice before this Bench. The writ application has been filed by Moulana Mufti Syed Md. Noorur Rehman Barkati, Imam and Khatib. Tipu Sultan; Shahi Masjid, Dharamtala and Chairman Gharib Nawaz Educational and Charitable Society, Calcutta 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 Articles 14 and 25 of the Constitution. The

petitioners also prayed for withdrawal of all conditions and restrictions which were notified by the Police and other authorities pursuant to the order passed in the case of Om Birangana Religious Society v. State, reported in 100 CWN 617.

2. By the Judgment dated 1st of April, 1996, certain restrictions and conditions on the use of microphones in the State of West Bengal were imposed. One of the important conditions that was laid down was 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 Central Board was directed to maintain noise level register indicating the level of noise which could be permitted by use of microphones on any occasion or in any area. It was also directed that (i) The District Magistrate and other Officers would issue permission for use of microphone/loudspeaker subject to conditions and restrictions imposed by the West Bengal Pollution Control Board, and (ii) the person or persons or any business houses dealing with or letting or parting with or selling microphones/loud-speakers, shall be bound to seal the volume of the noise level according to the directions of the Pollution Control Board before letting or parting with or selling such apparatus for any purpose and in default thereof, they should not be permitted to deal with such items. So far as use of microphones and/or loud-speakers by any religious society or at any religious function is concerned, it could be used solely for the purpose of communicating the speeches and religious teachings and tenets to the persons who have attended such functions and it should not be operated in such a manner so as to give reasonable cause for annoyance to any persons in the vicinity. So far as public meeting is concerned, the same was directed to be use in such a manner and with such a volume which could not exceed the level fixed up by the Pollution Control Board which should be treated as registered level and that the volume should be regulated in such a manner so that it may reach all persons who joined the meeting in a particular area but not beyond that particular area, and it should not be operated in such a manner so as to give reasonable cause of annoyance to the persons in the vicinity.

3. In this writ application, the petitioners case is 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 (Jammah) to isolated prayers. Azan is essential for all obligatory prayers and is called by Muezzin in loud voice to summon all Believers in Islam to prayers.

4. It Was further submitted by Mr. K. Banerjee, learned Advocate, appearing for the petitioners that when Azan was introduced by Prophet Muhammed (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. Therefore, it was submitted that Azan was and/or is called through an electrical loud-speakers and/or microphones five times a day and it is claimed that user of microphones for the purpose of Azan is a part of the religious right guaranteed under Article 25 of the Constitution.

5. It was further submitted that the right to perform religious practice may be acquired also by custom. When so acquired, it would have the protection of Article [25](#) in respect of all religious rites, practices, observances, ceremonies and functions which are customarily performed by the members of the petitioners community and not according to the version of the person who opposes.

6. In order to justify the use of microphones and the noise splitters, 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.

7. 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 only. ext. to all religions.

8. Some of the Imam of some Mosques filed an application for modification of the original order passed in Om Birangana Religious Society's case the matter was heard at length and the Division Bench of this Court passed an order dated 17th April, 1997, wherein similar arguments and prayers were made, the Court in that case held that:

"Article [25](#) of the Constitution of India provides that "subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The question is whether right to use microphones for the purpose of Azan is an integral and essential part of Muslim religion and whether that right is an absolute right and should be free from any restriction. Article [25](#) of the Constitution makes freedom of conscience and free, profession, practice and propagation of religion subject to firstly public order, secondly, morality and health and lastly other provisions of Part-III of the Constitution of and Article [19](#) of the Constitution.

In this case on April 1, 1996 this Court passed an order in disposing of the writ application, inter alia, holding that Freedom of Speech and Expression of a citizen guaranteed under Article [19\(1\)\(a\)](#) of the Constitution cannot be interfered with save and except in accordance with the provisions of Article [19\(2\)](#) of the Constitution. This Court held that public cannot be made captive audience or listeners by the use of Microphones after obtaining permission from the police and persons who are otherwise unwilling to hear the sound and/or music or the communication made by the loudspeakers, but they are compelled to tolerate all these things against their will and at the cost of their health. This Court held further that if permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a citizen to speak with others, the right to read or the right to know and the right to sleep and rest or to think any matter. It was held that a person and/or an organisation simply applying a permission and after obtaining permission he is not entitled to display loud-speakers. It was held that 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 or listener to listen sound from microphones. It was observed that freedom of speech and expression as guaranteed under Article [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 and in total

deprivation of others rights. A right cannot be conferred by the authorities concerned upon a person of a religious organisation to exercise their rights suspending and/or taking away the rights of others. It was also observed by this Court that it is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to practise or propagate religion includes the right to use loud-speakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loud-speakers during the religious performance in the society. Freedom of speech is guaranteed to every citizen so that he may reach with the minds of willingness and not coerced unwillingness. There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nerves system of human being. It was further held by this Court that 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 practise, profess and propagate religion, as guaranteed under Article [25\(1\)](#) of the Constitution, but that is not an absolute right. The provisions of Article [25](#) is subject to the provisions of Article [19\(1\)\(a\)](#) of the Constitution. It was held that on true and proper construction of the provisions of Article [25\(1\)](#) of the Constitution read with Article [19\(1\)\(a\)](#) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like of which he does not require. Amplifier and microphone create tremendous noise and sounds which may travel at least half to one kilometre away. Having regard to the provisions of Article [19\(1\)\(a\)](#) of the Constitution, it cannot be said that the authorities can issue permission to use microphones without having any regard to the fundamental rights of the fellow citizens. Such authorities by granting permission to display microphones 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. A citizen has a right to leisure right to sleep, right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder and may be compelled to hear this serious impact of sound pollution which has had an adverse effect on them and it may create health problems.

Under those conditions, this Court has passed an order directing the West Bengal Pollution Control Board to fix up the sound level within the State and accordingly the Pollution Control Board has fixed up the sound level and this Court directed that there will be no use of microphones between 9 p.m. to 7 a.m. as the people has a right to sleep and leisure and that right cannot be interfered with by anybody. This is the background for which the order has been passed.

Mr. Chatterjee's clients could not satisfy this Court that without the Microphone Azan cannot be given as it is known to everybody that in the past Azan was used to be given by human voice and that voice was sweet and by the use of electronic devices, viz. microphone that sweetness disappeared and on the contrary it is creating a tremendous sound pollution. Accordingly, it cannot be said that for giving Azans the applicants

should be allowed to use microphones in the early hours of the day and that is before 6 'O'clock in the morning. Azan is definitely an integral and essential part of the Muslim Religion, but use of microphones is certainly not an integral part of Azan."

In that case, it was also held that

"Whether a sound is sweet or not is a matter which cannot be decided by the Court; after all sound is sound whether it is sweet or sour and whether people likes it or not. There are people who are a habit of listening in louder voice, but it is not the habit of all citizen. A citizen's right of freedom of speech and expression has been guaranteed under Article [19\(1\)\(a\)](#) of the Constitution and the same cannot be allowed to be suspended or taken away by others by using the microphones and loudspeakers at random. A citizen has a right to speak with his family members, has right to worsship, meditation, right to live alone in peace and silence, has a right to read or think, and a student has a right to read for examination and such rights cannot be allowed to be suspended by any means whatsoever and this Court passed an order to that effect on April 1, 1996. It further appears that for violation of the order passed by this Court by using the microphones and loudspeakers in louder voice several complaints have been filed by the Pollution Control Board before this Court against different clubs, organisations, Durga Puja, Kali Puja, Jagatdhatri Puja, Saraswati Puja Committees and they have volunteered to admit their guilt and paid fines as imposed by this Court and they assured before this Court that in future they will not violate any condition as laid down by this Court and/or direction of the Pollution Control Board and as circulated by the State Government in this behalf.

We are of the view that now the time has come when everybody has to think either to survive or to perish. If the pollution is not controlled the human-being cannot survive in the long run. It is evident that sound is one of the recognised mode of creating pollution and this sound pollution has to be controlled by all means. One may like sound, but he has no right to take away or abridge the right of others. There is no religious freedom in this country excepting the provisions of Article [25](#) of the Constitution which is subject to public order, morality and health and other provisions of part III including Article [19\(1\)\(a\)](#) of the Constitution of India.

Accordingly, when the Constitution-makers have made it abundantly clear that one has a freedom of religion and that freedom of religion is subject to others' right as guaranteed under Article [19\(1\)\(a\)](#) of the Constitution, namely, religious freedom cannot abridge or take away or suspend others' right under Article [19\(1\)\(a\)](#) regarding their freedom of speech and expression. If on the basis of the submissions made by Mr. Chatterjee and Mr. Idris Ali, learned counsel for the appellants, this Court modifies its earlier order, we are of the view that in that event this Court will loose its secular character.

This Court is bound to maintain and follow secularism as clearly laid down in the Preamble of the Constitution of India as hereunder :

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into :

SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social economic and politician;

LIBERTY of thought, expression belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation:

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT, AND GIVE TO OURSELVES THIS CONSTITUTION."

Accordingly, when an order has been passed, it is applicable to all the religion and the political parties and the people of the State, this Court cannot make any discrimination in the matter of enforcing the order and making a relaxation in favour of a particular section of the community or a particular religion and that would be a destructive of the concept of secularism. When an order is passed by this Court after taking into consideration of all the aspects of the matter as explained in our order dated April 1, 1996, we do not find any reason to alter, modify and/or vacating the order passed this Court which has already reached its finality. The said order must be enforced and carried out by all sections of people in the State."

9. In *Om Birangana's case*, (*Om Birangana Religious Society v. State*, in C.O. No. 4303 (W) of 1995, judgment delivered on April 1, 1996) the rights of the citizen in India guaranteed under Article [19\(1\)\(a\)](#) of the Constitution and other aspects and matters incidental thereto had been considered in detail vis-a-vis the provisions of Article [25\(1\)](#) of the Constitution and it was inter alia held that;

"Article [19\(1\)\(a\)](#) provides Fundamental Rights on all citizens to Freedom of Speech and Expression, and that this right is only subject to restriction imposable under Article [19\(2\)](#) of the Constitution. The reasonable restriction on the exercise of freedom of speech and expression could be imposed in the interest of sovereignty and integrity of India, the security of the State, friendly relations with the foreign State, public order, decency or morality or in relation to contempt of Court, defamation, incitement to an offence.

The freedom of speech and expression of a citizen should not be interfered with save and except in accordance with the provisions of Article [19\(2\)](#) of the Constitution. It is a matter to consider whether the public are captive audience or listeners 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 of the communication made by the loudspeakers, but he is compelled to tolerate all these things against his will and health. If permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a

citizen to speak with others, the right to read or the right to know and the right to

sleep and rest or to think any matter. Can it be said that a person and/or an organization simply applying a permission and after obtaining permission is entitled to display loud-speakers from local authorities? 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.

Freedom of speech and expression guaranteed under Article [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 and in total deprivation of others' rights. A right cannot be conferred by the authorities concerned upon a person or a religious organisation to exercise their rights suspending and/or taking away the rights of others.

In this connection, Mr. Samanta learned counsel appearing on behalf of the petitioner, submitted that right to propagate religion is guaranteed under Article [25](#) of the Constitution. Article [20\(1\)](#) of the Constitution provides that subject to public order, morality and health and other provisions of Part-III of the Constitution, all persons are equally entitled to freedom of conscience, and that right to freely profess, practice and propagate religion.

It is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to propagate religion includes the right to use loudspeakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loudspeakers during religious performance in the society.

Freedom of speech is guaranteed to every citizen so that he may reach with the minds of willingness and not coerced unwillingness.

There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nervous system of human being.

The American Supreme Court in the case of *Ward v. Rock Against Racism*, 491 US 781, upheld the city regulations designed to regulate the volume of excessively amplified music at the Naumberg Accoustic Hundshell in New York city's Central Park to protect those who use a quiet, recreational area of the park called the Sheep Meadow and also to protect resistance in Central Park West area.

In this case, the American Supreme Court rejected the challenge to these city

noise regulations.

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 Article [25\(1\)](#) of the Constitution but that is not an absolute right. The provisions of Article [25](#) is subject to the provisions of Article [19\(1\)\(a\)](#) of the Constitution. On true and proper construction of the provisions 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 anything which he does not like or which he does not require.

Amplifier and microphone create tremendous noise and sounds which may travel at least half to one Kilometer away. I having regard 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 sole authority who can grant at will permission without having any regard to the fundamental rights of the fellow citizens. Such authorities, by 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 provision of the law. A citizen has a right to leisure, right to sleep right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder may be compelled to bear their serious impact of sound pollution which has had an adverse effect on them. It may create health problems.

Pollution is a factor which has now a prime importance in the modern society. The effect of sound on human bodies is very serious.

Accordingly, no authority would grant permission to use microphones without having any regard to the rights of the fellow citizens or the people of the area. Such a sound pollution cannot be altogether stopped, but the sound level has to be reduced in such a manner and in such a form so that the sound may not travel beyond a certain limit, as for example, in a public meeting microphones or amplifiers may be necessary so that the listeners may hear the speeches delivered by the leaders and for that purpose the sound has to be regulated in such a manner so that it may not travel beyond a reasonable limit and/or such a sound cannot be allowed to travel beyond the zone in which the listeners are there."

10. The Central Pollution Control Board passed an order in Schedule III framed under Rule 3 of the Environment (Protection) Rules. 1986, which is as follows :

"Ambient Air Quality Standards in Respect of Noise

Area Code	Category of Area	Limits in dB (A) Day Time	Leg. Night Time
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(a)	Industrial Area	75	70
(b)	Commercial Area	65	55
(c)	Residential Area	55	45
(d)	Silence Zone	50	40

Note-- 1 Day time is reckoned in between 6a.m.

and 9 p.m.

Note -- 2 Night time is reckoned in between 9 p.m. and 6 a.m.

Note -- 3 Silence Zone is defined as areas upto 100 metres around such premises as hospitals, educational institutions and Courts. The Silence Zones are to be declared by the Competent Authority. Use of vehicular horns, loud-speakers and bursting of crackers shall be banned in these zones.

Note -- 4 Mixed categories of areas should be declared as one of the four above-mentioned categories by the Competent Authority and the corresponding standards shall apply."

11. Because of the judgment delivered by this Court in Om Birangana's case (supra) the user of microphones during the main festivals of Bengali or people of the West Bengal like Durga Puja, Kali Puja, Saraswati Puja and other Pujas and festivals where it was claimed the show of to be same long standing customs, practice of the people for use of microphones, have strictly followed the restriction on the user of microphones in accordance with the directions passed by this Court and following the time limits and the decibel limits fixed up in this behalf.

12. The ambient noise for different areas have been fixed up and that is being strictly followed excepting that the writ petitioners and some others Imam of some other Mosques on the ground that user of microphones had become a part of their religious practice and in West Bengal Pollution Control Board and some other authorities had conducted a survey and from the survey it appears that about 96% of the population in the State of West Bengal are in favour of regulating and restricting the use of microphones in the manner in which it has been done by an order of this Court and people have welcomed it. There have been cases of violence against the persons concerned who have used microphones in violation of the norms and this Court had suitably punished the offenders for violating the same when such violation were brought to the notice of the Court including violations made by renowned Hotel Authorities in the city during new years eve and in each and every case without any exception everybody has admitted the guilt and tendered unqualified apology and given a written undertaking to the Pollution Control Board that they would in future carry out this restrictions faithfully for paying

finer and in some cases fines to the extent Rs. 50,000/- was imposed for wrongful user of microphones but everybody paid and it has been accepted by the people in general.

13. With regard to the use of fire works which also creates sound and which also have some adverse effect like that use of microphone. Noise is generated by vehicular traffic, by use of air horn, electric horn, microphone and bursting of crackers. The Burrabazar Fire Works and Mohan fire Works was aggrieved by the restrictions by the State Pollution Control Board and the police imposing ban on using of certain fire works which creates noise and creates a tremendous sound.

14. The Division Bench of this Court in the case of Burrabazar Fire Works Dealers Association v. The Commissioner of Police, Calcutta, reported in 1997 (2) CLJ 468, delivered a judgment on 26th September 1997, held that :

"It is very unfortunate that the Central Pollution Control Board held two meetings for the last 2 years but could not lay down any decibel limit for the fire works nor the Central Pollution Control Board has made any serious attempt to regulate the use of microphones. Of course, under the Police Act and/or Calcutta Police Act and the Calcutta Suburbs Act, certain powers have been conferred upon the authorities mentioned therein for stopping such use of microphones which would cause nuisance. Till now the Central Government have not come forward with any specific policy and did not lay down any standard or guidance by means of legislation for use of microphones nor the Central Government Pollution Control Board has ventured to enter into this field when sound pollution has become a global problem. It does not require the exercise of any research work to hold that the sound pollution in other developed countries like Europe and America is not so bad or worse like that of India where sound has become a menace to the society. The use of microphones and user of unrestricted noisy fire works is creating a problem for last one decade and this problem is increasing to an alarming extent and when it appears to this Court that all other authorities are not at all concerned to tackle this problem, this Court in Om Birrangana's case in order to uphold the fundamental rights of the citizens as guaranteed under Article [19\(1\)\(a\)](#) of the Constitution directed the Pollution Control Board to fix up a particular noise level so that the citizens' right to leisure, right to sleep, right to speak, right to read, right to worship, right to think are not forcibly taken away by the pollutants. Several pronouncements made by the Supreme Court in Union of India v. Raghbir Singh, Pomal Kanji Govindji v. Vrojlal Karsondas Purohit. M.C. Mehta v. Union of India, National Workers' Union v. P.R. Ramkrishnan (supra) and other cases mentioned above held that where a law of the past does not fit in the present context, the Court should evolve a new law and if the law fails to respond to the needs of the changing society, then either stifle the growth of the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in its way of its growth. Law must, therefore, constantly be on the move adopting itself with the fast changing society and not lag behind.

Being conscious of and for giving effect to this legal position this Court directed the State Pollution Control Board by its order dated 30th September, 1996 to take suitable measure to stop creating sound pollution by means of other than use of microphones, such as by use of electric air horn in the public vehicles and fire works and other sources of sound

nuisance. Accordingly, this Court had conferred power in the background of the law laid down by the Supreme Court mentioned above and to protect the fundamental rights of the citizens of this part of country, upon the Pollution Control Board who was directed to take suitable measure to stop creating sound pollution inter alia, by fire works. Accordingly, the source of power of the Pollution Control Board is the order of this Court. The order of this Court should be treated in addition to the powers conferred on the Pollution Control Board or other authorities under the law. It is admitted by various International Authorities and Experts that sound pollution has a tremendous effect on health and considering the fact, that the West Bengal is a densely populated State whereupon space are few and rare and when the source of enjoyment of the young people of this State are only to create sounds. In Deepawali or in Kali Puja, it is the common experience to the people of this State that it is a festival of sound not a festival of light. There is no cultural or religious sanction behind this. It is very unfortunate that the Pollution Control Board failed to take decision as directed by this Court. In course of hearing the Pollution Control Board in writing that the State Pollution Board on the strength of the order passed by this Court had taken a decision which was implemented on the basis of which the ban was imposed on certain noisy fire works. Records were produced. The learned counsels examined them but could not place before this Court anything to show that any decision was taken by the Pollution Control Board.

We express our strong displeasure to the course of action taken by the Pollution Control Board but in view of the fact that the restriction that was imposed without any formal order was designed to do some public good and the object was not to expose the, people to sound nuisance which is admittedly a Pollution this Court is in a peculiar facts and circumstances of this case only keeps it record on strong displeasure and directs the Pollution Control to strictly follow the orders and the Pollution Control Board should have taken a decision in compliance of the order passed by this Court and but not doing that they have brought about the situation which was not called for. There was no explanation for this failure.

True, according to the learned counsel appearing on behalf of the applicants the Central Pollution Control Board had not laid down any such decibel limit and it is also true that the applicants have not violated the directions and orders issued by the Pollution Control Board and/or the Police but faithfully carried out the above restrictions and/or impositions of ban. This Court records its appreciation to the actions of the fire works manufacturers and dealers in not trying to store or sell of the noisy fire works which was banned in an irregular manner and consequently for the last one year.

Professor K.J. Nath, Director of All India Institute of Hygiene and Public Health. Directorate General of Health Services, Government of India has forwarded his comments to the Dy. Commissioner of Police, Calcutta Arms Act Department, by his letter dated 26-8-1997 in which he had stated that according to Environmental Protection Agency, United States, the standard in respect of noise in commercial areas in a city during the day time is 65dB(A) leg. However, in residential area and silence zone such limits are 55 & 50 respectively in the day time. Excessive noise above 65dB(A) adversely effect the community health causing hearing impairment Neurological and Psychological problems. This could have other serious long-term health and behavioural impact on the

community. It is stated that the fire works are manufactured by using various chemical which are hazardous in nature. Accidents due to explosions and fire may be caused from such manufacturing units unless adequate precautions are taken. There has been devastating fire causing serious loss of property and life in many cities due to explosions in fire works factories. As Calcutta City is congested with very high population density, manufacturing of fire works in the city of Calcutta need to be totally banned. The use of fire works must also be restricted to maximum limits to be fixed by the West Bengal Pollution Control Board."

In that judgment it was also observed that

"In England and other countries of the world excepting U.K., there is no such constitutional protection and there is no fundamental right as provided by our Constitution and the Constitution of U.K. Our entire legal system is based on rights which means that even the parliament or the Legislature cannot make any law suspending or interfering with the fundamental rights of the citizens unreasonably. Citizens fundamental rights under Article [19\(1\)\(a\)](#) of the Constitution is a very important right so far as the citizens of this country are concerned.

Accordingly, Article [19\(1\)\(a\)](#) of the Constitution of India, cannot be allowed to be suspended and no person or authority can do anything which would have a chilling effect of this important fundamental right of the citizen of this country. That is a reason the countries where there is no such fundamental right, right has to be given by enacting in a law which is not the case in India. The meaning of expression cannot be said to be confined only to speech and expression of anger of represent by a figure, symbol, letter etc.

Supreme Court in the case of Coverjee v. [Excise Commissioner and the Chief Commissioner, Ajmer, MANU/SC/0010/1954](#) : [1954]1SCR873 (Constitution Bench) have held that there is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen. As it is a business attended with the danger to the community, it may be entirely prohibited and/or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulations rest in the discretion of Governing Authority. It was further held, in order to determine the reasonableness of the restrictions regard must be had to the nature of the business and the condition prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all traders can be laid down. The right of every citizen is pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the Governing Authority of the country essential to the safety, health, peace, order and morals of the community.

Sounds created by fire works, loud-speakers, aircrafts, railways are all the products of the technological age and high level of continuous sounds damages hearing and that there cannot be any two opinion about it. From the journals and the reports placed before this Court, it is clearly evident that several millions of people in different parts of the world have had their hearing damaged because of generating of these sounds. The noise not only creates pollution but it also a source of annoyance. Noise is also created by traffic

and noise also disturbs sleep. In our country the people have a right to sleep peacefully. A citizen too have right to a decent environment as highlighted by the Supreme Court in various decisions which are all well known in the field of pollution. The effect of bad night sleep as highlighted by an eminent scientist in the field Fiona Goolee in his article in British Medical Journal, in which it was stated that noise can have positive effects on health. The effect of bad night sleep includes mood change, reduce cardiovascular performance and poor performance at intellectual and mechanical tasks and it was further observed, a recent review of research into noise and sleep recommends, that sound at night in sleeping quarters should not exceed 45 dB(A). It was held that noise also adversely effects behaviour, increasing anxiety and reducing the incidence of helpful behaviour. Levels of aggression are increased by loud noise, an effect which may persist outside the noisy environment. Steel workers have more domestic disputes if they work in noisy areas. The other few impacts and illustrations of the effect of sound on human behaviour and the effect of sound which disturbs sleeps and night.

Noise has been identified as a pollutant under Air (Prevention and Control) Act, 1981. Noise admittedly is a hazard to health. For example. Calcutta is one of the greatest metropolitan cities of the world and the noise is one of the environmental pollutants that is encountered by the residents of Calcutta in day to day life. The ambient noise level in different essential areas in the City of Calcutta is alarming without loud-speaker and fire works. In Ballygunj area it is 94 in the morning and 84 in the afternoon and 75 in the night. In Salt Lake even in afternoon it is 82 and at night it is 78. In commercial areas, in B.B. Bag in the early morning it is 87 and in the night it is 90. In Esplanade area in the morning it is 91 and in the night it is 81.

The condition of the European countries, England and America cannot be equaled that the condition prevailing in the Slate of West Bengal particularly in the City of Calcutta. In some parts of the City of Calcutta, the density of population is the highest in the world. The West Bengal is a Slate where the density of population is also higher than the rest of India. This has a historical background which could not be lost sight of because of partition of India there were influx of millions of refugees from the then Eastern Pakistan now known Bangladesh and influx of traders and the business communities from different parts of India and Calcutta can be said to be a true cosmopolitan city in the true sense of the term here people from different states, different religions lives in an atmosphere which cannot be found in any part of India. West Bengal has got its own peculiar problem and this Court cannot decide a matter looking at the Europe or America where the amenities and the facilities are better. Density of population is very very thin.

Roads are maintained in a perfect order. Traffic noise is insignificant. The use of horn by vehicles is a thing which is prohibited there unless in case of emergency. People are disciplined. Traffic moves in a disciplined manner. No horns are there. The Ambient Noise Level in those countries are not at par with those noise level in the City of Calcutta and/or in different parts of the State of West Bengal.

Accordingly, whatever may be decided by the European countries or America, cannot have any direct bearing on the fixation of the sound level in the State of West Bengal. In other civilised countries, case move without making any noise or sound. Condition of the

roads is such that it cannot create any noise beyond tolerance. People in those countries are not in the habit creating unnecessary sounds but in our country because of the gift of the technology sound has become a source of pleasure for few peoples including some young people. Use of unnecessary horn in the vehicles has become a part and parcel of Indian culture. Even in residential areas one can experience that in the next door a patient is hobbering between life and death but neighbours are for their own pleasure, viewing television or radio or making disco dance by playing record player at a high pitch forgetting that such a tremendous sound is quickening the death of a neighbour who requires peace in that time.

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 citizen. Citizens have a right to live in a society which is free from pollution. If pollutants are encouraged, in that event would be the beginning of the end of the civilisation.

It is contended 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, this criticism have no force. If a citizen has a right it is also equally a duty on the part of this Court to see that such rights are preserved and no 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 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 activism 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, 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 civilised 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 Deepwali 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 a part of any religious order to use noisy fire works for the purpose of celebrating such religious function. There are sounds 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 all on a sudden and results in a serious impact on health which is a nuisance and punishable under the law.

In *R. v. Secretary of State for Transport ex. p. Richmond upon Thames London Borough Council and others* (No. 4) (1996) 4 All ER 903, the Court of Appeal considered the power of the Secretary of state acting under powers conferred by him by Section 78(3) of the Civil Aviation Act, 1982, made an order imposing new night flight restrictions at Heathrow, Gatwick and Stansted Airports for various periods. The decision followed consultation papers and imposed aggregated seasonal limits on the maximum number of aircraft movements permitted at the airport. The restrictions in respect of the summer periods allowed more noise than that which had actually been experience in the summer of 1988, but less noise than that which had been permitted under the restrictions in force at that time. The applicant local authorities, whose inhabitants were affected by aircraft

noise, filed application for judicial review of the decision of the Secretary of State. It was held that in the context of the power of the Secretary of State what was important was that the people should be able to understand the policy objectives the Secretary had identified when he began the decision-making process and that they had a chance of making informed submissions to him about the way in which he should exercise his powers against that policy background. The situation since 1993 and subsequent consultation papers had set out the proposals fairly and rationally in an intelligible policy context, it followed that the Secretary of State had not infringed the legitimate expectation of local residents.

In England, there is no written Constitution like that of India and in the absence of any constitutional right of the citizens, an Act was passed for the purpose of controlling the movement of certain noiser aircrafts by imposing complete ban on the scheduled movements between certain times. The English common law does not give them a right to sleep as such, but in the ordinary way their comfort and health is protected by the law of tort, which regulates conduct as between neighbours by such mechanisms as the law of nuisance (which is based on the concept of a reasonable amount of give and take) or the law of negligence (which creates duties of care to avoid unreasonable amounts of noise which may cause foreseeable injury to health). If, however, the noise creator's activities are sanctioned by statute, the common law right to damages, or the equitable right to seek injunctive relief, are removed in the context of Section 76(1) of the Civil Aviation Act, 1982. The European Convention on Human Rights (the Convention for the Protection of Human Rights and Fundamental Freedoms Time, 4 November 1950 TS 71 (1953) Cmd 8969), the balance between the rights of the individual and the rights of the State is achieved through different mechanisms this was illustrated in *Powell and Rayner v. U.K.* (European Court of Human Rights, judgment of 21, February, 1990, Series A No. 1724 at 18). The Court then accepted, in the context of an application made under Article 8(1) of the convention, that noise generated by aircraft in the vicinity of airports can affect the quality of (a person's) private life and the scope of enjoying the amenities of his home, however, although Article 8(1) recognises the right to respect for (everyone's) private and family life, his home.....', this is qualified by Article 8(2) which permits such 'interference by a public authority with the exercise of this right.....as is.....necessary in the interests of the economic well being of the country'. The night flight restrictions at Heathrow Airport was there since 1962.

Excessive noise is certainly a pollution in the society. In India, no effective and elaborate law has been made for controlling the noise creator. But under Article [19\(1\)\(a\)](#), read with Article [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 Article [21](#) of the Constitution. There are various other sources where the noise is created or generated but which offend citizens' right guaranteed under Articles [19\(1\)\(a\)](#) and [21](#) of the Constitution.

The war of decibels have 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 has a right to sleep and leisure. Disruption of disturbance in sleeps creates mental stress, deficient in working efficiency and other things.

Interference with rest or sleep and the rector associated with it -- lack of concentration, irritability reduced efficiency -- is one of the most obvious and annoying effects of noise. Sleep is a physiological necessity and therefore, health may be adversely affected by insufficient sleep. Apart from health, apart from deafness it affects the digestive system, cardiovascular disturbance in cardiovascular system (circular) etc. So this is the only view of all the authorities on the subject including Christopher N. Phenn and Other Medical Journals."

Pursuant to the directions contained in the fire work's case. The West Bengal Pollution Control Board after hearing and considering all aspects of the matter fixed up a decibel limit for fire works and because of that restrictions most of the sound making fire works have been banned in the State of West Bengal.

16. Being aggrieved and dissatisfied with the decision of this Court in Burrabazar Fire Work's case, Mohan Fire Works who was the Petitioner No. 2 in that case, moved the Supreme Court a Special Leave Petition, the said Special Leave Petition has been rejected by a Division Bench, presided over by the Hon'ble Chief Justice of India sitting with the Hon'ble Mr. Justice B.N. Kripal and Hon'ble Mr. Justice V.N. Khare, by the following order on 12th January, 1998 :

"We" have heard Sh. P.N. Lekhi, learned Counsel for the petitioner. We approve the view taken by the Calcutta High Court in the impugned judgment and the directions given therein regarding fixing of the noise limit. The special leave petition is dismissed."

17. Right to sleep is not only a fundamental right, it is to be considered as a basic human right. The effect of a bad sleep and no sleep was considered by this Court in Burrabazar Fire Work's case, which was approved by the Supreme Court. Accordingly, it cannot be contended that by user of microphones before 7 A.M. which has the effect of disturbing and taking away the right to sleep, cannot be agitated on the ground that the same is an

essential and integral part of any religion. No religious text or Book has been brought to the notice of this Court that user of microphones or user of any other machine excepting the human voice, Azan could be given not Azans through microphone. This Court has not prohibited the giving of Azan but only had put a restriction on the use of microphones. Azan is given 5 times in a day, there is no difficulty for four times but in the early hours before 7 O'clock. Azan could not be given through microphone this is the only main restriction.

18. The argument made by the learned Counsel appearing on behalf of the petitioner, Mr. Banerjee, that Schedule III of Rule 3 of the Environment (Protection) Rules, 1986, applies only in case of standards for omission or discharge of environmental pollutants, this question was considered by the Division Bench in Burrabazar Fire Work's case and held that 'it is' very doubtful to hold that the qualify of the air includes sound. Noise has been given a variety of definitions depending on the circumstances in which it occurs and effects it produces. It has been defined as "a number of tonal components disagreeable to man and intolerable to him because of the discomfort fatigue agitation and in some cases pain it causes'. (See Noise Control by Christopher N. Penn). Sound may be defined as any pressure variation that human ear can detect." In this connection, this Court in that case observe, that excepting laying down the Ambient Noise Quality Standards in respect of Noise in four different zones, no attempt has yet been made by the Law Making

Authority or the Rule Making Authority to lay down any standard for Impulsive Noise Level. Unfortunately, in India no such restriction has been made on the user of microphones or loud-speakers for which this court had occasion to consider the matter not only from the pollution angle but in the context of the rights of the citizens guaranteed under Article [19\(1\)\(a\)](#) of the Constitution of India and held that nobody has got any right and/or any fundamental right to suspend the rights of the other citizens of this country. Ordinarily, the duty of the Court is to enforce the law and normally the Court shall leave the matter to the Parliament of the legislature but the Supreme Court in the case of (2) Union of India v. [Raghubir Singh, MANU/SC/0619/1989](#) : [1989]178ITR548(SC) , held that it is used to be disputed that Judges make law. Today, it is no longer a matter of doubt that the substantial volume of law governing the lives of citizens and regulating the functions of the State flows from the decision of the Superior Court. In Pomal Kanji Govindji v. [Vrajlal Karsandas Purohit, MANU/SC/0372/1988](#) : AIR1989SC436 , it has been held by the Supreme Court that the law must respond and be responsive to the felt and discernible compulsions of circumstances that would be quitable fail and just and unless there is anything to the contrary in the statute. Court must take cognizance of the fact and act accordingly. In M.C. Mehta v. [Union of India, MANU/SC/0092/1986](#) : [1987]1SCR819 , it was held that where a law of the past does not fit in the present context, the Court should evolve a new law and in National Workers' Union v. [P.R. Ramkrishnan, MANU/SC/0025/1982](#) : (1983)ILLJ45SC , it was held, if the law fails to respond to the needs of the changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in the way of its growth. Law must therefore, constantly be on the move adopting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.

"The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again, practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The Judges do every day make law, though it is almost hereby to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present". ('The Reform of Equity', in C. J. Hamson(ed). Law Reform and Law Making (1953), p. 31).

19. James S.C. Reid, 'The Law and the Reasonable Man, 1968, Proceedings of British Academy, 193, 1945, said :--

"I suppose that almost every doctrine of the common law was invented by some Judge at some period in history, and when he invented it he thought it was plain common sense- and indeed it generally was original. But, with the passage of time, more technically minded Judges have forgotten its origin and developed it in a way that can easily cause injustice. In so far as we appellate Judges can get the thing back on the rails let us do so; if it has gone too far we must pin our hopes on Parliament."

20. This view has also been approved by the Supreme Court in the case of Mohan Fire Works.

21. Right to religion guaranteed under Article [25\(a\)](#) of the Constitution is subject to public order, morality and health.

22. It was contended by Mr. Banerjee, that "matter of religion" in Article [21\(b\)](#) embraces not merely matters of doctrine and belief pertaining to religion.

23. The reference of the Supreme Court judgment, this case has no application to the point at issue as Article [26](#) provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire moveable property and immovable property and (d) to administer of such property in accordance with law.

24. Article [26](#) confers certain rights on religious denominations. The word 'denomination' has been defined to mean "a collection of individuals classed together under the same name, a religious sector body having a common faith And organisation and designated by a distinctive name. In order to constitute a religious denomination, therefore, three conditions are,

(a) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being;

(b) A common organisation;

(b) Designation by a distinctive name.

25. Article 2f only confers rights to manage religious affairs by every religious denomination or section thereof. Supreme Court in the case of Durguh Committee v. [Hussain, reported in MANU/SC/0063/1961](#) : [1962]1SCR383 , held that the matters of religion in Article [26\(4\)](#) includes even practises which are regarded by the community as a part of its religion. In order that the practises in question should be treated as a part of religion they must however, be regarded by the said religion as essential and integral part. Unless such practises are found to constitute an essential and integral part of a religion, their claim for protection under Article [26](#) cannot be accepted in other words, the protection must be confined to such religious practises as an essential and integral part of it and no other. In that case, it was also held that Christ sect of Muslim is a religious denomination. It cannot be said that Islam is a religious sect but it is one of the important religion in the world. It is not understood how learned Counsel could argue for protection in Article [26](#) of the Constitution, which is confined to religious denomination or sect thereof. In Hindu Religious Endowment v. [Laxmindra Thirathaswamiar, MANU/SC/0136/1954](#) : [1954]1SCR1005 , the Supreme Court held that the religious denomination or organisation enjoys complete autonomy in matters of laying down the essential and integral part of the said religious organisation. The above case laws clearly lays down that a religious denomination is an entity within the main fold of a particular religion and in Acharya Jagdiswarananda Avadut's case reported in [MANU/SC/0050/1983](#) : 1983CriLJ1872 , the Supreme Court held that Ananda Marg was founded upon the essence of Hindu philosophy and held that Ananda Murtiji had established Ananda Marg which held to be a collection of individuals who has a system of beliefs or doctrines which they regard as conducive to their spiritual well-being; they have a common organisation and collection of these individuals for a distinctive name and that is why it could be treated as a religious denomination within the Hindu religion. Accordingly, the concept of religious denomination could not be imported in this aspect of the matter and in case it was found to be a religious denomination in that event, according to the Supreme Court judgment in Hindu Religious Endowment's case every religious denomination of organisation enjoys complete autonomy to the matter of deciding as to what rites or ceremonies are essential according to the tenets of the religion they hold and in such matters no other authority can interfere. Article [26](#) does not deal with the rights of an individual but deals with the rights of a religious denomination or section of a religious denomination. Therefore, what Article [26](#) does is to protect and safeguard collective rights in contradiction to individual rights safeguarded under Article [25](#) where the rights to religion is guaranteed. Accordingly, 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 of recent origin and accordingly it could not be said that the use of microphone and loud-speaker are essential

and integral part of the religion. Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers 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 practise, profess and propagate, microphone has become

an essential part of the religion. Azan is not a form of propagation but it is an essential and integral part of religion to meet at the prayer from a call being made through

Azan .

26. The submissions made by Mr. K. Banerjee, cannot be accepted as most of the points now stand approved by the decision of the Supreme Court and the other submissions are wholly misconceived.

27. Further use of microphone is not an integral of Azan and/or necessary for making it effective. Azan is there and will be there. But simply, because microphones have been invented and ultimately it is found that it is one of the major sources of sound pollution and it affects the fundamental rights of the citizens under Article [19\(1\)\(a\)](#) of the Constitution and making the citizens 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 the Schedule therein are ultra vires under Articles [14](#) & [25](#), is wholly misconceived as it has not resulted in 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 have to be carried out by all concerned at any cost. Simply because no such formal restrictions have been imposed in other parts of India and the fundamental rights under Article [19\(1\)\(a\)](#) are 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.

28. It is very unfortunate that even though the parent order was passed on 1st April, 1996, these people did not care to follow the order of this Court. Earlier, this question was specifically dealt with and dismissed but still then most of them, barring a few, have violated and are still violating the order passed by this Court by using microphones, violating the time decibel restrictions.

29. It is made clear that from the date of this order if anybody is found violating the restrictions imposed on microphone/loud-speaker, the Police Authorities are hereby directed to immediately seize and confiscate the microphone from whatever place it would be found and reported it to the Court for taking drastic action against the violators who are violating wilfully and deliberately. The Officer-in-Charge of all Police Stations in the 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 microphones 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 Superintendents 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 (2) 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 law.

30. The Officer-in-Charge of all the Police Stations under the control of the Commissioner of Police, Calcutta and the Director General of Police of West Bengal are directed to confiscate the microphones from any Mosques if it is found that the said Mosque Authorities are still violating the time limit i.e., no Mosque should use loud-speaker before 7 a.m. and the decibel limit that have been fixed in this behalf and shall send report to this Court through the Commissioner of Police and/or the Superintendent of Police of all respective Districts to the Pollution Control Board and the Pollution Control Board is directed to intimate to this Court about the same.

31. The directions contained in this order should be circulated immediately by the West Bengal Pollution Control Board to all the authorities and should brought to the notice of all concerns including the public at large and the Mosques Authorities through Radio and Television and by use of notices so that they may be made aware of the same and informing them that in case of any violation the matter will be dealt with very severely. In case of any laxity on the part of the administration in implementation of this order should also be dealt with very severely.

Ronojit Kumar Mitra, J.

32. I agree.