

## AN ANALYSIS ON PUBLIC NUISANCE IN INDIA

<sup>1</sup>ASWATHI

<sup>1</sup> Student, 3<sup>rd</sup> YEAR ,BBA.LLB(HONS), , Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences, Saveetha University, Chennai- 77, Tamilnadu, India.

<sup>2</sup>R. DHIVYA

<sup>2</sup> Assistant Professor, Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences, Saveetha University, Chennai- 77, Tamilnadu, India.

<sup>1</sup>aswathiachu905@gmail.com , <sup>2</sup>divyar.ssl@saveetha.com

### ABSTRACT

This study deals with nuisance as it is most frequently pled common law action in environmental litigation. The law of nuisance protects the right of the property owner or the right of the person to use and enjoy the property and his liberty . Nuisance is an act that arises from unlawful and unreasonable use of a person's own property that is working an obstruction or injury to the right of other person who is common public and producing such annoyance to the public and causing inconvenience and discomfort resulting in damage or injury to the rights or the property of a person . Pollution which causes environmental damage or injury to land (as opposed to the public at large) may also give rise to civil claims for private nuisance or trespass at common law. If pollution is caused by a person's negligence, it may give rise to a civil claim under the common law of negligence.

**Keywords**-nuisance,environment,public,damage,negligence.

### INTRODUCTION

Pollution or waste may also be considered to be a risk to public health or environmental health under the Northern Territory Public and Environmental Health Act 2011 and Public Health (Nuisance Prevention) Regulations. The Public and Environmental Health Act 2011 has two offences relating to public health nuisances. A public health nuisance is anything that puts, has put or will put at risk or damages, has damaged or will damage public health. public health means the physical, mental and social wellbeing of the community. For example, a public health nuisance could relate to a place, dust, fumes, vapour or other emissions, water,

or refuse. It is an offence to intentionally or recklessly engage in conduct which results in a public health nuisance. It is also an offence to knowingly allow a public health nuisance and intentionally fail to remove it or prevent it. Under the Public Health (Nuisance Prevention) Regulations certain activities are deemed to be nuisances. For example, chimneys which emit lots of smoke (except from houses) and premises or workplaces in such a state as to be a nuisance or injurious to health are nuisances. If you are affected by a public health nuisance, you can complain to an authorised officer of the Department of Health. An authorised officer must investigate your complaint and decide whether or not a public health nuisance exists. The Chief Health Officer of the Department of Health may issue a public health notice or public health order to direct a person to rectify a public health nuisance. Enforcement of breaches of the Public and Environmental Health Act 2011 may only be started by an authorised officer of the Department of Health or by a person authorised by the Minister for Health. Proceedings may only be started within two years of the offence. In addition to public health nuisances, the common law of public nuisance may also be relevant to dealing with nuisances. This applies when members of the public at large suffer injury, loss or damage as a result of a nuisance.

**Aim of the Study:**

To analyse whether Nuisance is a negligence or human intervention and know the role of various legislations

**Research methodology**

- 1) This study is a non doctrinal research
- 2) Secondary datas are used

**Source of study**

List of journals, articles, books are used for reference purpose in this study .

**ENVIRONMENTAL NUISANCE**

An environmental nuisance is something that has an adverse effect on the amenity of an area that It is caused by noise, smoke, dust, fumes or odour; an unreasonably interferes with or is likely to unreasonably interfere with the enjoyment of the area by persons who occupy a place within the area or are otherwise lawfully in the area; or It is an unsightly or offensive

condition caused by contaminants or waste.<sup>1</sup>It is an offence to cause an environmental nuisance under s83(5) of the Waste Management and Pollution Control Act. The Waste Management and Pollution Control Act does not apply to mining sites, petroleum operations and pipeline operations but similar offences of causing an environmental nuisance exist under different legislation.<sup>2</sup>

- The Mining Management Act sets up an offence for doing an act or failing to do an act that is in breach of an environmental obligation under the Act and causes environmental nuisance on a mining site. An environmental nuisance under the Mining Management Act means:
  - (a) an adverse effect on the amenity of land caused by noise, smoke, dust, fumes or odour; or
  - (b) an unsightly or offensive condition on the land.<sup>3</sup>
- The Petroleum Act sets up an offence for doing an act or failing to do an act at a petroleum operation that causes the release of a contaminant or waste material on, above or under land, if the contaminant or waste material causes an environmental nuisance to land all of which is within one kilometre of the site where the contaminant is released.<sup>4</sup> An environmental nuisance under the Petroleum Act means an adverse effect on the amenity of the land caused by noise, smoke, dust, fumes or odour; or an unsightly or offensive condition on the land.<sup>5</sup>
- The Energy Pipelines Act also has an offence for causing an environmental nuisance. A person must not, during the conduct of an authorised pipeline operation do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline, if the contaminant or waste causes an environmental nuisance to land all of which is within one kilometre of the pipeline. The penalty for causing an environmental nuisance under all of these Acts is a level 4 penalty under the Environmental Offences and Penalties Act.<sup>6</sup> A level 4 penalty is punishable on conviction by a fine of up to 77 penalty units for a person and up to 385 penalty units for a corporate body. The Waste Management and Pollution Control Act

<sup>1</sup> <https://projects.ncsu.edu/project/are306/lecturenotes/Unit7NNuisance.pdf>

<sup>2</sup> <https://environmental.laws.com/environmental-law/nuisance>

<sup>3</sup> <http://www.jstor.org/stable/43951004>

<sup>4</sup> <http://connect.michbar.org/envlaw/reports/chapter13>

<sup>5</sup> <https://legal-dictionary.thefreedictionary.com/environmental+law>

<sup>6</sup> <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1918&context=ealr>

is administered by the Department of Natural Resources, Environment, The Arts and Sport. As the Act does not state who may bring prosecutions for offences, private prosecutions for offences may be brought by members of the public. Prosecutions must be brought within 12 months of the Department of Natural Resources, Environment, The Arts and Sport first becoming aware of the commission of the offence. Enforcement proceedings for offences under the Petroleum Act may only be commenced with the written consent of the Minister for Resources. Members of the public may therefore bring private prosecutions against offenders provided that they obtain the consent of the Minister for Resources. Proceedings may be brought at any time. Enforcement of offences under the Mining Management Act may only be commenced by the Chief Executive Officer of the Department of Resources or with his or her written approval. Proceedings must be commenced within 12 months after the day on which Chief Executive Officer first became aware of the commission of the alleged offence.<sup>7</sup>

#### **Nuisance, Negligence and trespass :**

In addition to pollution offences, there are offences for causing an environmental nuisance under the *Waste Management and Pollution Control Act* and for causing a public health nuisance under the *Public and Environmental Health Act 2011*.<sup>8</sup>

Common law does not strictly recognise compensation for “environmental” harm but it does recognise damage to property and so it can be a useful source of legal rights, if property is damaged by pollution.<sup>9</sup>

In *Boomer et al. v. Atlantic Cement Company*, the plaintiffs claimed that the dirt, smoke, and vibrations coming from the defendant's cement plant caused injury to their property. The property owners sought damages and an injunction to close the plant. The plant already employed the best pollution control technology.<sup>10</sup> The Boomer court addressed the economic consequence of the injunction and the effect of the nuisance. The court weighed the economic effect of closing the plant against the harm to the individual plaintiff's land, and concluded that the cement company could pay permanent damages in lieu of an injunction or closing. This case illustrates the limitations of private nuisance law to remedy pollution. Courts

---

<sup>7</sup> <http://law.jrank.org/pages/6513/Environmental-Law-Common-Law.html>

<sup>8</sup> <http://edont.org.au/factsheets/nuisance-negligence-trespass/>

<sup>9</sup> [http://shodhganga.inflibnet.ac.in/bitstream/10603/27937/10/10\\_chapter5.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/27937/10/10_chapter5.pdf)

<sup>10</sup> <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1534&context=lawreview>

typically balance the equities and hardships. Private nuisances do not always outweigh the economic contribution of the polluting entity.<sup>11</sup>

*Village of Wilsonville v. SCA Services*, is a case in which the plaintiffs, a village and other governmental bodies, alleged that the defendant's hazardous chemical landfill was a public nuisance. The plaintiffs sought to enjoin the operations of the landfill and require removal of toxic waste and contaminated soil. The court found that there was a substantial danger of groundwater contamination and explosions from chemical reactions. Although the damages were prospective, the nuisance already was present. Therefore, the court granted an injunction and ordered a site clean-up.<sup>12</sup>

“Coming to a nuisance” is the phrase used to describe a defense that the complainant or plaintiff affected by the nuisance moved into the area where the complained about activity” had already been in existence.<sup>13</sup>

An example of “coming to a nuisance” occurs when someone moves onto property near an airport or industrial complex and then complains of the nuisance that existed prior to his moving there. Generally, the fact that an individual purchases property with the knowledge of the existence of a nuisance or that he came to the nuisance will not defeat his right to the abatement of the nuisance or recovery of damages.

## **SUGGESTIONS**

The existing legal provisions are inadequate to control the enormous Problems of environmental pollution of various types in the country.

1. Therefore, the judiciary has to play a more active and constructive role this has become all the more essential in view of the lack of awareness in the masses of the pollution problems; lack of planning and the plenty of the industries and the local bodies in this regard. New jurisprudential techniques have to be devised to deal adequately with the problems of pollution control and protection of environment.

2. Environmental law should be implemented effectively by adopting new instruments, mechanisms and procedures like environmental impact assessment and environmental audit

---

<sup>11</sup> *Boomer et al. v. Atlantic Cement Company*, Air 1980 SC 1622

<sup>12</sup> *Village of Wilsonville v. SCA Services*, 1987 1 SCC 395

<sup>13</sup> [https://www.cals.ncsu.edu/course/are309b/Common\\_Law\\_Environmental\\_Remedies.pdf](https://www.cals.ncsu.edu/course/are309b/Common_Law_Environmental_Remedies.pdf)

and incorporate environmental objectives in manufacturing processes, minimum usage of hazardous materials and toxic chemicals, careful usage of toxic gases will reduce environmental load.

3. Government must initiate the programmes to create public awareness with regard to relation between human rights and environmental protection and also related laws.

4. Sincere commitment to good environmental practices must be supported throughout the globe for sustenance of life and adopting green technologies, using solar energy, low CFC emitting technology, those which are highly innovative, cost-effective, eco-friendly technologies.

5. Coordinating efforts globally between all states of India and locally among government's center and states, private groups, organizations, operational and financial institutions and people at large in appropriate aspects of their respective activities through Exchange of information, sharing of expertise knowledge, developing arrangements for technical cooperation is needed.

6. The sentencing policy should place emphasis on abatement of pollution of environment rather than imposition of fines or traditional penalties.

### **Conclusion**

This study concludes that the general rule is that a person may use his land or personal property in any manner he sees fit. However, this rule is subject to limitation. The owner must use his property in a reasonable manner. A nuisance arises whenever a person uses his property to cause material injury or annoyance to a reasonable neighbor. Odors, dust, smoke, other airborne pollutants, water pollutants and hazardous substances have all been held to be nuisance. Under both private and public nuisance law, the plaintiff must prove that the defendant's activity unreasonably interfered with the use or enjoyment of a protected interest and caused the plaintiff substantial harm. The trier of fact determines whether an activity is unreasonable by balancing the social utility of the activities against the harm they create. Private nuisance actions to gain compensation and force polluters to discontinue interference with their physical private property as well as with their comfort and enjoyment of their property. Public nuisance law protects from interference a "right common to the general public." Plaintiffs may bring a public nuisance action if there are damages,

interference, or inconvenience to the public. A state may assert a public nuisance action as an exercise of its police powers the typical situation. A private citizen may bring a public nuisance action only if he or she can show that he or she has suffered from a harm that can be distinguished from that suffered by the members of the general public.

#### References :

1. Penal law of India – Gour
2. Boomer et al. v. Atlantic Cement Company, Air 1980 SC 1622
3. Village of Wilsonville v. SCA Services, 1987 1 SCC 395
4. M.C.Mehta v union of India (1987) 1 SCC
5. Municipal council Ratlam v vardhichand AIR 1980 SC 1622
6. Reg v Latha , CRR 1869,UNC-C
7. Berkefield v emperor (1906) ILR 34 CAL 73
8. Re, Umesh Chandra kar case (1887) ILR 14 CAL 656
9. <http://edont.org.au/factsheets/nuisance-negligence-trespass/>
10. <http://law.jrank.org/pages/6513/Environmental-Law-Common-Law.html>
11. <https://environmental.laws.com/environmental-law/nuisance>
12. <http://www.jstor.org/stable/43951004>
13. [https://www.cals.ncsu.edu/course/are309b/Common\\_Law\\_Environmental\\_Remedies.pdf](https://www.cals.ncsu.edu/course/are309b/Common_Law_Environmental_Remedies.pdf)
14. <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1918&context=ealr>
15. [http://shodhganga.inflibnet.ac.in/bitstream/10603/27937/10/10\\_chapter5.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/27937/10/10_chapter5.pdf)
16. <https://legal-dictionary.thefreedictionary.com/environmental+law>
17. <http://connect.michbar.org/envlaw/reports/chapter13>

18. <http://www.thelawyerschronicle.com/an-analysis-of-the-law-of-nuisance-and-environmental-protection/>
19. <https://projects.ncsu.edu/project/are306/lecturenotes/Unit7NNuisance.pdf>
20. <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1534&context=lawreview>
21. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
22. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.



