



NUISANCE VS. RIGHT TO PUBLIC HEALTH: A LEGAL PERSPECTIVE

Dr. Yuvraj Dilip Patil Associate Professor, National Institute of Construction Management and Research University, Pune

Abstract

A nuisance is an annoyance or injury caused to the person or property of another. It affects the right to live in a healthy, safe, and comfortable manner. The objective of the research paper is to evaluate the issues regarding nuisance due to noise, health, safety, and public health and to analyse the judgement passed by the Supreme Court and High Court to protect the public's health. The researcher assessed and analysed the issues of nuisance caused by noise pollution, as well as air pollution caused by construction and fireworks, and their impact on public health. The use of loud speakers as well as construction activity during odd hours does not only violate the right to sleep, which is a fundamental right under Article 21 of the Indian Constitution, which guarantees "right to life and personal liberty," but also, violates a basic human right. The researcher used the doctrinal research method, also known as "armchair research," which entails analysing laws and case laws.

Keywords: nuisance, law, public health, right

I] Introduction

The word 'nuisance' is derived from the French word *nuire* and the latin word *nocere*, meaning 'to do hurt or to annoy'. It means anything to be done to hurt, damage or inconvenience of the lands, tenements or hereditament of another, and not amounting to a trespass. Nuisance is considered as a civil wrong as we as criminal wrongⁱ. The objective of filing criminal case for nuisance is to punish the wrongdoer and the objective of civil case is to compensate the injures as we as get injunction (stay) order which is a prohibiting action.

The nuisance is of two kinds Private nuisance and public nuisance.

Sec 268 of IPC defines public nuisanceⁱⁱ as, A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity.

Punishment provided under Sec 290 of IPC of fine two hundred rupees.

Private nuisance is the injury cause to health, comfort and convenience of the owner or possessor of the property. Private nuisance is contrary to the public nuisance affect the individual or individuals as distinguished from the public at large.

In case of nuisance party needs to establish following points in the court of law -

- 1) It is wrongful act, and
- 2) It damages or loss or inconvenience or annoyance cause by such act to another

Remedies for nuisance

- 1) Abetment- the removal (in peaceful manner) of a nuisance
- 3) Damages- The measure of damage will be the diminution of value of the plaintiff's property as a direct result of the defendant's nuisance.
- 4) Injunction-In case compensation in money is not adequate relief by filing complaint to the pollution control board.

II] Research methodology

In socio-legal research two research methodologies can be used. Those are doctrinal and non-doctrinal research methods. The doctrinal research methodology includes the research based on books, journals, cases and online data which is popularly known as 'arm chair research'. Whereas, the non-doctrinal research includes research based on data collection by using surveys, interview and questionnaires. The non-doctrinal method of research is also known as, research on the field. In this research paper



researcher has used doctrinal research methodology. It is armchair research which involves analysis of laws, and case laws.

III] Issues and challenges

1) Construction Noise and Public Health

In India, urbanization is developing very fast and huge buildings are being constructed with fastest speed. During demolition of old sites, repair work of roads and construction of new buildings huge machines which produce a lot of noise are being commissioned and it has become a common scene in every big city where construction work is in progress.

Sound is music which is pleasant whereas, noise is unwanted sound which is considered harmful or detrimental to human health and quality of life.

According to officials of State Pollution Control Board, all builders are required to obtain the board's consent before starting construction. The board has laid down permissible noise levels and work timings for such work. In case of complaints, citizens can complain online to PCB, or apply at board's office. The action will be taken after verification.

The noise at Construction sites affects public health in the nearby vicinity as follows-

- a) Mental disturbance & Stress
- b) Sleep disturbance
- c) Behavioural change
- d) Gradually cause hearing loss

2) Noise Vs. Right to religion

Maulan Mufti Syed and Other V. State of West Bengalⁱⁱⁱ, The Calcutta High Court held imposition of restriction on the use of microphone and loud speakers by the state government between 9 pm to 7 am which inter alia include recitation of azan on microphone in early hours before 7 AM is not violative of Article 25 of constitution guaranteeing of freedom of religion.

The court further 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.

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 which imposes reasonable restrictions. 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.

Re noise Pollution Case^{iv}, The SC held that Diwali is considered as a festival of lights and not of noises and air pollution. Shelter in the name of religious under article 25 of the Constitution of India cannot be sought for, for bursting firecrackers and that too at odd hours.

Diwali is known as one of the most famous festival. On the occasion of this festival, people burn crackers and sparkles to express their happiness. The burning of these fireworks leads to metal pollution in air.

Arun Gopal & Ors. Vs. UOI & Ors.^v Based on the report submitted by the Joint director, CBI at Chennai, the S.C. on Wednesday, 29th September 2021, admonished top six firecracker manufacturers in the country for the use of barium salts in fireworks that were dangerous & beyond safety limits in the fireworks by manufacturers.

Bursting of fire cracker during festivals does not only create air pollution but also noise pollution. High air pollution levels can cause immediate health problems including^{vi}:



- a) Aggravated cardiovascular and respiratory illness
- b) Added stress to heart and lungs, which must work harder to supply the body with oxygen
- c) Damage cells in the respiratory system

The most susceptible to severe health problems from air pollution are:

- a) Individuals with heart disease, coronary artery disease or congestive heart failure Courtesy: Economic Times e-paper, 11 October 2017 3
- b) Individuals with lung diseases such as asthma, emphysema or chronic obstructive pulmonary disease (COPD)
- c) Pregnant women
- d) Outdoor workers
- e) Older adults and the elderly
- f) Children under age 14
- g) Athletes who exercise vigorously outdoors

IV] Legal Perspective

1) The Noise Pollution (Regulation and Control) Rules 2000.^{vii}

Sec 3 - The state government shall declare an area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area as silence zone.

Sec 5A - The use of horns, Sound emitting fire crackers and construction equipment, shall not be used or operated during night time in residential areas or silence zones.

Schedule - Ambient Air Quality standards in Case of Noise Rule 3(1) & 4(1) –

Area Code	Category of Area / Zone	Limit in Decibels (A) Leq (It is an energy mean of the noise level over a specified period.)	
		Day time (6.00 a.m to 10.00 p.m)	Night Time (10.00 p.m. to 6.00 a.m.)
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

2) The Motor Vehicle Rules, 1989^{viii}.

Rule 119(1) and (3) the sirens and multi tone horns shall be continues to be banned except for police Van, Ambulance and Fire Brigades.

3) Directive Principles of State Policy under 48A of the Constitution of India^{ix}.

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

4) Article 51A(g) in The Constitution of India 1949

It is duty of citizens of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

5) The Environmental Protection Rules 1986^x

Rule 89 A(i) The manufacture, sale or of fire-crackers generating noise level exceeding 125 dB (AI) of 145dB(C) at 4 metres distance from the point of bursting shall be prohibited.



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

The term 'noise' included under the definition of air pollutant under sec 2(i) of the Air act, 1981. The "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. & sec 2 (b) "air pollution" means the presence in the atmosphere of any air pollutant.

Sec. 39 Penalty for contravention of certain provisions of the Act imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

V] Way forward

1. There is need to increase the punishment for nuisance under IPC under section 290 which shall include the imprisonment of 6 months or fine of 10 thousand rupees.
2. Use the preventive measures at construction site to protect from noise as wear a hearing protection device, use sound barrier and enclosures, schedule regular hearing test.
3. Sound level meter to monitor noise in the public places as well as in the silence zone needs to be installed.
4. It is the duty of the Government to protect and improve the environment and implement the standards laid down under Noise pollution Control Rules 2000. To ensure that awareness programme shall be conducted in the educational institution, prosecution against violators, seizure of equipment.

VI] Conclusion:

It is not only duty of the government to protect and improve the environment but it is also duty of the Citizens. Government and citizens should work hand in hand to achieve the common menace to prohibit the public nuisance and protect the public health.

Rererences

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- [vii] The Noise Pollution (Regulation and Control) Rules 2000, Section 3 Ambient air quality standards in respect of noise for different areas/zones.
- [viii] The Motor Vehicle Rules, 1989
- [ix] The Constitution of India 1949.
- [x] The Environment (Protection) Rules, 1986.