



# CRITICAL ANALYSIS OF NUISANCE IN LAW OF TORTS

By:

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## ABSTRACT

*The purpose of the research paper is to deal with nuisance in law of torts, explain the essentials of it and compare the various types of nuisance namely public nuisance and private nuisance. A nuisance is committed by an individual when they act in an unlawful manner to prevent another person from using or enjoying their property or some other right they have. Public nuisance basically means the inconvenience caused to the society at large whereas private nuisance deals with a loss or harm suffered to a particular individual. It explains the development of nuisance over the period of time. It differentiates between the common meaning of nuisance and its definition in legal terms. It also focuses on the contrast between trespass and nuisance, the former deals with direct injury to land whereas the later consists of indirect injury. Even though there is no proper definition of nuisance per se, it can widely be understood through the courts' interpretation over the time period. Earlier even small issues were regarded as nuisance, and thus the plaintiffs were rewarded with either damages or injunctions; but now a days the court considers while passing the judgement the surrounding scenarios too and conclude that small and trivial issues cannot be regarded as nuisance. Nuisance in tort law is a very important concept and it is different from negligence, it deals with the issues regarding peaceful enjoyment of one's land. The bulk of the research paper analysis the different scenarios related to nuisance, and the court's judgements and how the concept of nuisance has evolved over time. Both public and private nuisance have become major issues today, and therefore nuisance should be codified in a proper manner.*

Keywords: Nuisance, Uncodified, Unlawful interference.

## INTRODUCTION

The law grants the owner of a property the right to use and enjoy their property free from encumbrance or hindrance. On the other hand, we have the right to assert that the tort of nuisance has been committed if another person's improper use or enjoyment of the client's property results in an unlawful interference with the client's enjoyment or of that property or his rights over it or in connection with it. Examples of this would be anything that disrupts a person's comfort, health, or safety.

Nuisance is a word which is very commonly used in day to day lives and therefore it can be interpreted that it is nothing, but inconvenience caused to a person. It is recognized by the law that minor inconveniences can be sustained, as they are unavoidable and only those which cause major or substantial harm are actionable. It is generally a continuing wrong or a temporary wrong and not a momentary one. Various jurists have given many definitions of nuisance. According to Pollock, Nuisance is the wrong done to a man by unlawfully disturbing him in the enjoyment of his property, or, in some cases, in the exercise of a common right. <sup>1</sup>

The term "nuisance" has a more specific meaning in the context of the law than it does in everyday speech. In any given society, the law will always make an effort to strike a balance between the conflicting interests of the plaintiff and the defendant in the case at hand. The concept of a nuisance is something that everyone is exposed to on a routine basis, and the courts in India have built their own body of precedent by borrowing many ideas and concepts from English legal principles and rulings based on common law.

Section 268 defines a doer of public nuisance as one who: (i) does any act or is guilty of an illegal omission, (ii) which causes (a) any common injury, (b) danger or (c) annoyance to (iii) the public or to the people in general, who dwell or to occupy property in the vicinity; or (iv) causes injury, obstruction, danger or annoyance to persons who may have any occasion to use any public right. <sup>2</sup>

The nuisance law exists to protect people from adverse environmental events such as deadly gas emissions, bad smells, excessive noise, vibrations, and oil spills. It protects people from unauthorized intrusions into their rights to air, sea, and light, as well as their right to travel freely on highways and streets.

## LITERATURE REVIEW :

### ➤ ARTICLES

- *“The place of private nuisance in modern law of torts” - BY CONOR GEARTY<sup>3</sup>*

According to the author, private nuisance is gradually becoming more perplexing. He states that the tort's lack of definition has made it vulnerable. Nuisance according to Professor Williams and Hepple, is essentially a type of negligence. He states three main problems relating to nuisance namely definitional, structural and doctrinal dimension of tort. He cites various case laws and explains the essentials of nuisance and mainly duty of care. He claims that the term "nuisance" should not be used in its implementation or application. Finally, he concludes by saying that now that nuisance's autonomy has been safeguarded and it is no longer bound by negligence's stifling preoccupation with the norm of a reasonable defendant, it has no reason not to thrive once more.

- *“TORTS : DISTINCTION BETWEEN NUSIANCE AND NEGLIGENCE”<sup>4</sup> – BY A.W.B*

<sup>1</sup> A.K Jain, Law of Torts, published by Ascent Publications, Delhi, 8th edition, 2016, pp 249, ISBN: 978-81-93556-06

<sup>2</sup> Section 268 of Indian Penal Code, 1860

<sup>3</sup> Conor Gearty. 'The Place of Private Nuisance in a Modern Law of torts'. The Cambridge Law Journal, July 1989, Vol.48, No.2 (Jul.,1989), pp.214-242. JSTOR. <https://www.jstor.org/stable/4507285>.

<sup>4</sup> A.W.B. 'Torts: Distinction between nuisance and negligence'. California Law Review, Mar.,1918,Vol.6, No.3, pp.228-230. JSTOR. <http://www.jstor.com/stable/3474845>.

The author in this article takes an example of a case **Fernandes v. Western Fuse Company**<sup>5</sup>, and explains how different courts have regarded it either as nuisance or negligence. The author also states about the doctrine of *res ipsa loquitor*, and how majority of the courts have presumed it to be negligence. He states that there is a difference between negligence and nuisance, the former deals with law of property and the later is present in torts. The violation of the property fixes a liability in nuisance, and the question of negligence is not relevant in the case and the defense of due care is no defense in it. It was lastly ruled in the above case that it is nuisance. The author lastly also concludes that there is a tendency of law to ignore the nuisance theory, except when the surrounding situations guarantee it.

- *'A CONTINUED NUISANCE' – BY BENJAMIN PARKER*<sup>6</sup>

The author explains the concept of continued nuisance by taking two cases. It has been said that in the tort of private nuisance an occupier of the land is liable for both the nuisance he has created and for the ones he has continued and failed to take the reasonable steps to avoid it. And reasonable remedial expenditure which is incurred by the owner may be recovered by him, and there shall be no case of double recovery. It also further stated that no liability for remedial expenses could arise unless and until the plaintiff gave the defendant a proper notice to rectify the nuisance. The author also explains that subjective factors related to a case could sometimes also be used to extend the standard of care that applies to a continuing nuisance. In relation to claims against public bodies, fault-based liability was considered to be inconsistent.

### ➤ **BOOKS**

- *"The Law of torts"- By Ratanlal & Dhirajlal*<sup>7</sup>

The author discusses the liability of the highway authority in case of nuisance. Earlier it was held that the highways authority were not liable for any neglect, but after some time it was repealed. As a result, there is no longer any differentiation between local government misconduct and non-feasance. A new act now governs it, it is known as the Highways Act, 1980. If a highway authority is sued for not maintaining a road, the defendant has the burden of proving that the authority did not use ordinary diligence under the circumstances. If a private body creates a nuisance on the highway, then irrespective of the fact that negligence was there, he would be held liable for it.

- *"Law of torts" – by A.K JAIN*<sup>8</sup>

<sup>5</sup> Fernandes v. Western Fuse Company, (1917), 34 Cal.App.420

<sup>4</sup> Benjamin Parker. 'A Continued Nuisance'. The Cambridge Law Journal, Vol.61, No.2(Jul.,2002), pp 260-263. JSTOR. <https://www.jstor.org/stable/4508882>.

<sup>5</sup> Ratanlal and Dhirajlal, The Law of Torts, published by Lexis Newis, 27<sup>th</sup> edition, pp 608-609, ISBN: 978-5035-741-5

<sup>6</sup> A.K Jain, Law of Torts, published by Ascent Publications, Delhi, 8<sup>th</sup> edition, 2016, pp 255, ISBN: 978-81-93556-06

The question of abatement of nuisance is a major point. Generally, abatement is not favoured by law, as it may lead to breach of peace. It is rather suggested that the least injurious method of abatement must be chosen, and a notice shall be given before. If the abatement is possible without going on the wrong-doer's land, then it can be done without giving a notice. However, unless it directly affects him, a private citizen has no legal right to do anything to stop a public nuisance, the remedy that is available to him is to file a writ petition.

- “*The law of tort including Compensation under the Consumer Protection Act*”- by S.P Singh <sup>9</sup>

The author compares and contrasts the two concepts of trespassing and causing a nuisance. According to him, trespassing causes damage to the possession itself, whereas making a nuisance of oneself is related to the rights associated with the possession. Trespass can be taken to court on its own, whereas nuisance can only be taken to court if there is evidence of damage. The interference that occurs during a trespass is always caused by some tangible object, whereas the interference that occurs during a nuisance can be caused by intangible objects such as odour, vibration, and so on. Trespassing can be defined as the unlawful entry onto another person's land without causing any physical harm. Interfering with the land of others in an unreasonable manner constitutes a nuisance.

### **STATEMENT OF PROBLEM**

The intention behind this paper is to analyze the concept of nuisance in tort law and the development of it. Nuisance is still a developing theory, and it is very difficult to substantiate it. Even though many jurists have given various definitions of it, there is still a lot of confusion. Furthermore, since it is uncodified, the court's have to refer to old precedents and English case laws to decide a case. Since Nuisance originated as an English concept, it is gradually being made to suit the Indian background with the changes in time.

### **RATIONALE OF STUDY**

This paper seeks to analyze the concept of nuisance, explain the essentials of it and present definitions of various jurists. It also seeks to distinguish between the modern day meaning of nuisance and the earlier concept of it, it focuses on how nuisance as a tort has developed over time. With the help of judicial precedents, various cases of nuisance is explained. It also tries to establish the importance of nuisance as a concept in tort law and its need to be codified. This paper would be giving a basic understanding of nuisance and would gradually move forward to give a wider perspective of it and compare it with the foreign interpretation of nuisance cases. It would try to remove the confusion between nuisance and negligence and give suggestions on matters related to nuisance.

### **RESEARCH OBJECTIVES**

The purpose of the research paper is

<sup>9</sup> S.P.Singh, 2015, *The law of tort including Compensation under the Consumer Protection Act*, published by Universal Law Publishing, Seventh Edition, pp: 284-285, ISBN: 978-93-5035-552-7.

- To understand the concept of nuisance
- To understand the evolution over time of the meaning of nuisance
- To understand the nature of nuisance
- To understand types of nuisance
- To understand the difference between nuisance and negligence
- To analyze judicial precedents and comparative data to come to a conclusion
- To understand the issues related to nuisance at present
- To investigate the difference between Indian laws related to nuisance versus English law of it .

### **RESEARCH QUESTIONS**

1. What is the meaning of nuisance ?
2. What are the essentials of nuisance ?
3. Why is there a need to codify nuisance ?
4. What is the current scenario of nuisance ?
5. what is the difference between nuisance and negligence ?
6. How has the concept of nuisance evolved over time ?
7. Difference between the general meaning of nuisance and the meaning of it in legal terms .
8. Why trivial issues do not constitute to nuisance ?

### **RESEARCH METHODOLOGY**

The methodology that is applied for carrying out the research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are the Indian Penal Code 1860, Judicial Precedents, Law of Torts and others. The secondary sources of data comprise of published books, journals , scholarly articles, print media , online journals and others were used .

## **CHAPTER 1 : MEANING , NATURE, AND SCOPE OF NUISANCE IN TORTS**

Nuisance has been defined to be anything done to hurt or annoyance of the land , tenements, or hereditaments of another and not amounting to trespass<sup>10</sup>. According to Salmond, in causing or allowing to cause without lawful justification, the escape of deleterious thing from one's land or from anywhere into land in possession of the plaintiff, such as water, smoke, gas, heat, electricity, etc. It is derived from the French word nuire, to do hurt, or to annoy<sup>11</sup>. Because there is no nuisance subtype of negligence, the due care defense cannot be claimed in such cases.

Essentials of Nuisance :

1. **Wrongful act** : Unlawful behavior can be defined as any action that is carried out with the intention of infringing upon the legal rights of a different individual.

2. **Injury/loss/Discomfort sustained by other individual** : The injury suffered should be such as it is recognized by law. An suit for nuisance requires proof of injury, either actual or presumed. The harm must be more than just emotional or theoretical; it must be real, permanent, and lasting.<sup>12</sup>

Nuisance is of two kinds :

• **Public nuisance**: An act that is considered to be a public nuisance is one that has an adverse effect on the general public or a sizeable segment of it. It must violate the rights of the general public, and there is only one course of action that can be taken against it. Acts that have a negative impact on the public's health, safety, comfort, or convenience are considered to be a public nuisance.

• **Private nuisance** : According to Winfield's definition, a private nuisance is any illegal interference with the possession or enjoyment of the land by an individual, as well as any right over or connected to the land. There are three distinct categories of private nuisance, which are as follows: (i) causing a disturbance by intruding on the neighbors' property (ii) causing direct physical damage to the neighbors' land (iii) disrupting the neighbors' ability to enjoy the peaceful use of their land (iv) In each instance, the primary component of a nuisance is the same, and that is interference with or disruption of the quiet use of land.

Public annoyance does not give rise to a private cause of action. In order to prove that an individual has a private right of action, they have to prove the following points :

1. He must demonstrate that he has incurred greater harm than the average population.
2. The damage must be immediate and not be a consequence of something else. The personal and individual harm that has been caused by this circumstance is not of a nature that is sufficiently direct to warrant legal action.

<sup>10</sup> Stephen,iii499

<sup>11</sup> Sir John Salmond, The Law of Torts, published by Sweet & Maxwell, 14<sup>th</sup> Edition,1965, ISBN: 978-0421533509

<sup>12</sup>. Rafat Ali v. Sugjani Bai , AIR 1999 SC 283,pp.285,286 : (1999) 1 SCC 133

3. The harm must be demonstrated to be of a serious character, not transitory or evanescent, in order to qualify for compensation.<sup>13</sup>

In India, under section 91 of the Code of Civil Procedure, in the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the advocate general, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate in the circumstances of a case .<sup>14</sup>

In the context of a nuisance, the rule does not take into consideration trivial and minor difficulties; rather, it only takes into account sensible inconveniences, which are harms that significantly reduce the comfort, enjoyment, or worth of the property that is affected.<sup>15</sup> Reasonability is the main factor which is taken into account . When deciding if an action constitutes a nuisance, it is important to evaluate not just the action itself, but also the context in which it was performed. One place's idea of an annoyance may not be shared by another.<sup>16</sup>

Most of the cases of nuisance are because of the following reasons :

- Light Blockage
- Environmental pollution
- Sound pollution

In the matters related to nuisance, the court tries to place back the plaintiff in the original position by the following methods:

- Injunction
- Abatement
- Damages

ONUS OF PROOF :

The burden of proof lies with the defendant in a case involving a public nuisance once it has been established that the nuisance exists and that the defendant is the one who is responsible for causing it. In the event that he is unable to comply, he will be held responsible for the situation. In the instance of a private nuisance, on the other hand, after a claimant has proven that a nuisance has arisen from the defendant's land, the burden of proof shifts to the respondent to demonstrate that he has a defence to the allegation that is being made against him.

<sup>13</sup> Benjamin v. Storr, (1874) LR 9 CP 400, 407; Saddu v. Suka, (1902) 5 Bom LR 116

<sup>14</sup> Advocate-General v. Haji Ismail Hasham, (1909) 12 Bom LR 274

<sup>15</sup> PER LORD WENSLEYDALE in St. Helen's Smelting Co. v. Tipping, (1874), 11 HL Cas 642

<sup>16</sup> Struges v. Bridgman, (1879) 11 Ch D 852 ; 41 LT 219

In contrast to the complainant in a negligence action, who must establish that the accused violated their duty to exercise ordinary diligence, the plaintiff in a nuisance action is not required to demonstrate that the defendant was careless or violated their responsibility to exercise due precautions.

Because of this, throughout history, the law of nuisance emerged as a supplement to the action of trespassing. While trespass gave protection against direct invasions of possession, nuisance provided protection against harms to land or its use and enjoyment that were more indirect in nature. Additionally, the level of protection that was provided was unrivalled.

## **CHAPTER 2: JUDICIAL PRECEDENTS**

### **SOLTAU V. DE HELD, (1851)** <sup>17</sup>

In the case that was discussed earlier, the plaintiff resided in a home that was adjacent to a Roman Catholic church, where the defendant served as a priest. The bell at the chapel was rung continuously throughout the whole day and even in the night. Because it was determined that the continuous striking of the bells all day was a disturbance to the public, the court granted the plaintiff an injunction.

The court's decision was proper; however, this decision can't be taken in terms of Indian context as it is a secular country with diverse religions, the courts could however regulate the timings and volume at which the bells could be rung.

### **THE LAND MORTGAGE BANK OF INDIA V. AHMEDBHOY HABIBHOY AND KESOWRAM RAMANAND, (1883)** <sup>18</sup>

The plaintiffs were the owners of a building that contained a number of rooms, and by renting those rooms out, they made a sizeable profit. The respondents were the proprietor of a nearby cotton mill that was established after the plaintiffs inhabited the defendant's premises. The building was constructed after the plaintiffs moved into the defendant's premises. Because of the noise and pollution caused by the mill, some of the rooms in the structure were never occupied. The plaintiffs were successful in their complaint against the defendants, and as a result, they were awarded monetary damages as well as an injunction prohibiting the accused from increasing the volume of dust, cotton fibers, or motor sound exceeding what was previously there.

The ruling of the court was in line with the rights of the plaintiff to proper enjoyment of his property and the right to peaceful environment, since the mill was set up later after the plaintiff moved into the premises, they can't hold that he consented to the noise and pollution around him. The plaintiff was incurring both mental and actual loss.

<sup>17</sup> Soltau v. De Held, (1851) 2 Sim NS 133

<sup>18</sup> The Land Mortgage Bank of India v. Ahmedbhoy Habibbhoy and Kesowram Ramanand, (1883) ILR 8 Bom 35



**LEANSE v. EGERTON ( Lord) , (1943)<sup>19</sup>**

As the plaintiff was strolling on the roadside, she was struck by broken glass that had fallen from a window of a vacant residence owned by the defendant that had been damaged the former Friday night as a result of an air attack. This caused her to sustain injuries. Because the defendant's agents' offices were closed over the weekend and it was difficult to get labour over the weekend, the threat to the bystanders was not addressed until the following Monday. This was due to the fact that it was difficult to recruit labour over the weekend. The owner did not have any idea what the state of the building was in. According to the judgement, it is necessary to assume that the defendant is aware of the annoyance and to take efforts that are commensurate with the severity of the problem in order to avoid it. As a result, he was held responsible for it despite the fact that he had sufficient time to make the necessary changes.

The case above fulfilled all the requirements to be constituted as a nuisance. The defendant should have taken due care to rectify the situation and due to the injury sustained by the plaintiff, it is essential to hold the defendant liable for his misfeasance.

**WARE v. GARSTON HAULAGE Co., Ltd.,(1944)<sup>20</sup>**

The defendant left his van attached lorry parked on the side of the highway and abandoned it. The plaintiff crashed his motorcycle into the trailer's back end because it had no rear lighting throughout the night . In a complaint for nuisance, the respondent was held liable for his action. The deed of excavating on a highway , projecting trees or lighting , or leaving slick or hazardous materials on the road constitute nuisance .

In matters related to nuisance on highways, any misconduct is considered as annoyance. In fact, extra care has to be applied to avoid situations like these. This is a prima facie case of nuisance and therefore the accused is held accountable for his actions.

**SLATER v. STATE OF WORTHINGTON'S CASH STORE , (1941)<sup>21</sup>**

The defendant's property's roof accumulated snow and ice due to an unusual violent snowstorm. There were no efforts made to clear the snow or alert the public about it . The plaintiff was hurt by the snowfall while peering through the window . She filed a lawsuit , claiming negligence or nuisance. The defendant's pleaded that it was an Act of God, but it got rejected because they didn't do anything to stop the annoyance and were therefore responsible for both nuisance and negligence.

The defence of Act of God cannot be applied here as due care was not exercised even after knowing the facts of the situation, it would have been applied if the accused even after taking necessary action could not avoid it. Therefore, it is considered nuisance for the general public and negligence was on the part of the accused.

<sup>19</sup> Leanse v. Egerton(Lord), (1943) 1 KB 323

<sup>20</sup> Ware v. Garston Haulage Co., Ltd., (1944) KB 30

<sup>21</sup> Slater v. State Of Worthington's Cash Store., (1941) 3 ALL ER 28

**HOLBACK HOTEL Ltd . v. Scarborough Borough Council ( 2000)**<sup>22</sup>

The aforesaid claimants were the original owners and renters of a hotel located on a cliff above the ocean. In this case, the defendant borough council, as the possessor of the servient tenement (the area between the hotel premises and the sea), was obligated to maintain the hotel grounds. Land slips took place in 1982 and 1986 but in 1983 there was a massive slip which led to the land erosion and the hotel collapsed. During a damage claim against the council, they were held not liable for it .

Since the damage was not foreseeable, therefore the obligation to mitigate the damage arises first and foremost with knowledge, followed by the taking of action to rectify it; the existence of the obligation and the scope of its application in a case of nonfeasance will be ascertained by using the test of whether or not it is reasonable to impose the liability and to what extent it should be imposed.

**SUHELKHAN KHUDYARKHAN AND ANOTHER v. STATE OF MAHARASHTRA AND OTHERS (2005)**<sup>23</sup>

The appellants were tenants of a particular plot since last 15-20 years where they erected a tin shed and had a religious bookshop known as 'R.K. Kitab Ghar' . The municipal council filed an complain to remove the shop , without any proper reason . The appellants filed a case in the high court and it was ruled that it was a case of public nuisance because there was no proper jurisdiction involved and the high court dismissed the writ petition .

In the case discussed above, it is a case which is affecting the public at large and therefore the court took necessary action to rectify the situation.

**Ms. SHAILAJA YADAWAD vs Mrs. Aishwarya ( 2020)**<sup>24</sup>

The plaintiff was getting annoyed due to the music classes being conducted by the defendant in a part of a property which was specially mentioned to be used for specific purposes only and not for personal gains. As a result, she initiated legal action to secure a permanent injunction. The defendant argued that the classes were only held once in a week and it is used to promote the cultural and moral interests of the society . In the ruling , it was held that the annoyance caused must be real and of substantial nature , for slight trivial or fanciful inconvenience resulting from delicacy or fastidiousness , no relief can be granted .

In cases related to nuisance, the court does not take into account small inconveniences as it is expected that the parties absolve the matter between themselves or adjust accordingly. For minor difficulties no relief can be awarded by the court.

<sup>22</sup> Holback Ltd . v. Scarborough Borough Council., ( 2000) 2 ALL ER 705

<sup>23</sup> Suhelkhan Khudyarkhan and another v. State of Maharashtra and others., (2005) 5 SCC 586

<sup>24</sup> Ms. Shailaja Yadawad v. Mrs.Aishwarya.,(2020) O.S.No.1664/2017

**GMM PFAUDLER LIMITED vs. TATA AIG INSURANCE COMPANY ( 2010 )<sup>25</sup>**

The plaintiff owns the top floor of a building and just above it there is the terrace . The defendant occupies the 6th floor of the same building and has placed 3 air conditioning machines and their units are placed on the terrace . The plaintiff claimed that the units made a lot of noise and would disturb his peaceful enjoyment of the place , and one of the units was placed directly above the conference room which created a sounds and vibrations that affected his meetings . He further also said that due to the vibration of the chillers , there were cracks in the walls and ceilings and structural damage . The court upon careful examination of the scenario held that the plaintiff can't expect the full quietness of a town in today's world when business is constantly conducted using various technologies and the complaint regarding damage to ceiling was held as non-existent.

This case is a true example of how the concept of nuisance has evolved over time period. It has been adjusted to suit the requirements of today's world and work in alignment with it. It is essential to take the factors surrounding the case, if a remedy would have been granted in this case then it can said that everyone has a right to absolute silenced environment.

**SRI DWARKANATH G vs M/S MULTI PEARL APARTMENT OWNERS ( 2022)<sup>26</sup>**

The plaintiff filed a suit for mandatory injunction to shut down the waste management unit which was set up at the terrace . His main complaint in a nutshell is that the unit is making life in his apartment uncomfortable due to the bad odour and the flies and insects . The defendant argued that none other residents had a problem with it and he took all the reasonable steps in order to efficiently manage the waste . The defendant also pleaded that since the city corporation was not collecting the waste this was the only viable option left . The court held that since the plaintiff is living in a community , he has to adjust. The complaint he has raised appears to be wholly unwarranted unless he can show that there is a serious hindrance with his ordinary and acceptable standard of comfort .

It can be also be held by the court's ruling that a person can't be held liable for the acts that is necessary for the welfare of the society and if it is not his statutory duty. The interests of the society at large and whether they are getting affected plays a huge role in formulation of the judgement.

<sup>25</sup> GMM Pfaudler Limited v. Tata AIG Insurance Company.,(2010) Notice of Motion No.3741

<sup>26</sup> Sri Dwarkanath G vs M/s Multipearl Apartment owners., (2022) MFA NO. 2403 of 2022

## CHAPTER 3: CRITICAL ANALYSIS

Therefore, from the above case laws it can be understood that nuisance is a simple and short term, but in law it is very difficult to rightly analyze and interpret it in accordance with the facts of the case. It widely differs in connotations in each case. Nuisance as a concept has evolved with time and many jurists have defined it according to their understanding.

It can be correctly stated that the concept of nuisance is dynamic in nature, and changes according to changes in society. Earlier, mere disturbance or slight noise could come under the ambit of nuisance, but now in certain cases it has been ruled that a person cannot expect a full quiet environment and slight noise caused is not nuisance. It can be assumed from the court's ruling that now a days one cannot expect a peaceful surrounding at all times, and minimal noise has become part and parcel of the society. While deciding cases now the society in which we are living in is also been taken into considerations.

It can also be fairly said that nuisance does take into account the consequences of the action and does not always go by prima facie evidence. It also examines that whether there was knowledge of the said accident. The ruling in **Rylands v. Fletcher**<sup>27</sup> can be separated from the concept of nuisance because accumulation of a hazardous object or substance is not required, nor is the exit of the accumulated material required (though this frequently occurs).

In certain cases, both nuisance and negligence go hand in hand, though there is still a lot of confusion regarding the both. If the accused has omitted to take the due care even after having knowledge of nuisance, it also then considered as negligence. It is essential to determine who actually owed the duty of care and till what extent. The defendant can't be held liable for the services that others are supposed to provide.

Nuisance also gives right to an individual if he/she has suffered a loss which is more than what the society has suffered, to file a case individually. Society as a whole plays a very important part in dealing with questions related to nuisance. Sometimes if a individual claims that he has suffered some inconvenience which the society considers a part of their living, then it can be said that he is sensitive and therefore has no claim in nuisance.

Private nuisance has gained importance over time as the individuals can exercise sole authority on their property. The courts even allow abatement of injuries or provide injunction orders in order to on restore the plaintiff back to their original position. But a main doubt which comes up is that on how to decide whether an injury is trivial or substantial; as the courts do not take into account minor issues faced by the individual. They expect that the individual tries to resolve the matter on their own or adjust accordingly.

In cases of public nuisance, the courts generally regard the public authorities to take more than reasonable standard of care and carry on their duties properly. However, they are also protected in cases of statutory duty,

<sup>27</sup> Rylands v. Fletcher, (1868), LR 3 HL 330

which might cause inconvenience to a person, but they are held as necessary in order for the development and benefit of the area.

The concept of nuisance has evolved over time, and English judgements are quite frequently referred to decide cases regarding nuisance. The tort law was an English concept, and it was adapted and modified to suit the Indian context. Therefore, now also courts refer to English judgements and old precedents to decide upon a case. A case which prima facie might be held as a case of negligence, might actually be a case of nuisance. The courts generally award an injunction order in order to refrain the harmful activities, or suitable damages is awarded to the plaintiff.

In English cases related to nuisance, we can say that they are more stricter in comparison to Indian scenario . What is regarded as trivial sound here , might be considered as nuisance there, since the concept of nuisance originated there, the people are also more aware of it and place the rights in a high pedestal when compared to the Indian society. Since the Indian society is so diverse and secular in nature, that certain situations which might be considered nuisance elsewhere will just be held as part of living.

Attempting to maintain the rule of law, fairness, equity, and good conscience, the idea of nuisance has been modified and updated to accommodate diverse ways of understanding it depending on its own regional, social, and economical variety.

### **SUGGESTIONS**

In light of what I've learned about the tort of nuisance and after the research work, in my opinion, I would like to say that there should be more codified laws in relation to nuisance in India. It is still uncoded which creates a lot of confusion, and it is high time that nuisance should be regarded as a important part of the Indian legal system. There is still a lot of debate whether a case is negligence or nuisance, therefore it is essential to codify nuisance. Further it is also important to spread awareness regarding it, since given the huge population of India, there are many cases of it which go unreported. Even though there are many English precedents related to it, but they can't always be referred for deciding the cases in India.

### **CONCLUSION**

Therefore, the term "nuisance" refers to interference with a person's regular life. Almost no codification exists in the area of nuisance law, and there is no aspect criminal aspect to it. A multitude of judgements and the writings of famous jurists gave nuisance as a tort a thorough framework. It has progressed greatly with the aid of precedents from the past, guaranteeing fairness and wellness for all parties which may be involved, such as the affected party in the case of private annoyance and society at large in the scenario of public nuisance. The scope and the spectrum of nuisance is wide, and it is a developing concept, which changes in accordance to time and society. It serves to protect individual's interest and the society at large.

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