



## LAW OF TORT & NOISE POLLUTION

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### ABSTRACT

To ensure the environment's conservation, India has a plethora of laws addressing various aspects. But, due to legal gaps or potentially the authorities' slackness in implementing the laws, this legislation has maintained a collection of ineffective words that have lost their force over time. The Supreme Court has interpreted the right to life and personal liberty, as established by "Article 21, to include a right to a pollution-free environment". However, Indian environmental law has expanded and changed greatly in the last two decades, with constitutional courts creating the fundamental notions of the environmental justice system. In India, British English law was used in almost every aspect of law of tort that remained untouched. It is worth noting that common law, which was first introduced by the British in India, still continues to exist in the country under Article 372(1)6 of the Constitution of India until it's been revised or changed due to unusual circumstances. Modern environmental tort remedies are based on the common law doctrines of negligence, trespass, nuisance, strict liability and other tort remedies. Noise is a result of everything we do. It is a part of our daily lives, and we have started living with it. Mankind's ability

to make noise has drastically grown. The boom of traffic, the bustle of crowds, fast industrialization, and the passing of aeroplanes and trains all around us. Noise can also infiltrate the home; loud music and many more things. Under this research paper we will analysis the law of tort in terms of its effect on pollution cause by noise and will explore the use of it for seeking remedies.

**KEYWORDS:** environment, remedies, nuisance, negligence, trespass

### INTRODUCTION

Unwanted or irritating noises that encroach unnecessarily into our everyday activities are referred to as noise pollution. It is a distraction that prevents us from working at our best, lowers our quality of life, and in some circumstances, causes irreparable hearing loss. Its negative impacts on humans, birds and animals are all quite noticeable.

The term "environment" refers to all environmental factors and conditions that have an impact on an organism's existence and growth. It is impossible to build better living circumstances for humans once it has been disturbed. To make life more meaningful, the protection and conservation of the natural environment must be prioritised, and human activities that cause ecological imbalance must be considered as part of a long-term development strategy.<sup>1</sup>

Noise pollution is becoming more prevalent. According to research, the cumulative intensity of environmental noise doubles every ten years as our economic, industrial and social growth accelerates.<sup>2</sup> Given the

<sup>1</sup> E.P. Odum, *Pollution and Environmental Health*, Fundamentals of Ecology, W.B. Saunders Company, London, Third Edition (pg. 433-452)

<sup>2</sup> "Nagahiro T, Mohan Katyal, G.R. Chhatwal, T. Katyal, M. Satake, *Encyclopedia of Environmental Pollution and its Control*, (Volume 3) Anmol



ever-increasing rate of technology advancement, this geometric progression-wise rise of noise might seem perplexing. In 1880, A German bacteriologist who won the Nobel Prize, Robert Koch said, "A day will come when man will have to fight merciless noise as the worst enemy of health". The noise is like pollution and it is a gradual agent of death, he said and for the coming next 30 years, if it continues it may become fatal. Others believe and fear that, in the coming future, we will be bereft of our inherent instincts such as hearing and breathing.<sup>3</sup> While air pollution is restricted to respiratory and breathing problems, noise pollution, in addition to interfering with our everyday activities, has the potential to turn us deaf or render us senseless in large and persistent doses<sup>4</sup>. In contrast to air and water pollution, it leaves no recall or proof for taking notice. This is a crucial issue when it comes to responding with noise in a legal context.

law of tort deals with negative outcomes affecting persons (corporations entities and individual too) and assets. Rather than the objects themselves, the term "property" refers to goods that are under a legal framework. The earth's atmosphere, for example, has no formal hierarchical structure and thus is not covered by the law of tort. Tort law kicks in when anything goes wrong. As a result, whenever environmental harm occurs, tort law will be invoked. It is more interested in curing sickness than in avoiding it. It is more concerned with reparation than with punishment. It is among the remedies to

environmental contamination. The nature of the loss will determine the criterion for assessing unreasonable interference.

In "*Heath Vs. Brighton Corporation (1908)*"<sup>5</sup>, it was held that, "An Anglican priest who was affected by low frequency noise could not enlist the aid of the nuisance law because the over-sensitive persons were not covered by the prevailing regulations. Therefore, a person with a particularly sensitive olfactory or auditory response is not given any higher standard of protection than a person with 'normal' response."<sup>6</sup> "World Health Organisation (WHO)" in a recent report stated that - "noise is capable to affect human health and well-being in a number of ways, including annoyance reaction, sleep disturbance, interference with communication, performance effects, and effects on social behaviour along with hearing loss"<sup>7</sup> Most of the people in the society have accepted the nuisance occur in our day to day life and have made peace with it, most of the people are not even aware of the remedies available with the help of law of tort.

#### STATEMENT OF RESEARCH PROBLEM

There are various laws in the country but there is a need of specific act for noise pollution. One has to face a lot of mental and physical harassment due to noise pollution in their daily routine but there are few remedies in law of tort which can be used by the people to compensate their loss. In this paper various

Publications Private Ltd, New Delhi, 1995 (pg. 277-290)"

<sup>3</sup> S.K. Khanna, M. Gopal, A.K.Gupta, *Nomographic procedure for road traffic noise evaluation*, Indian Highways, 1984 (pg 6-12)

<sup>4</sup> *Bijayananda Para Vs. District Magistrate*, AIR 2000 Ori 70

<sup>5</sup> "(1908) 24 TLR 414"

<sup>6</sup> "H.Lloyd William, *Noise as a Nuisance*, University of Pennsylvania Law Review and American Law Register, 1934 (Volume. 82, pg 568-584)"

<sup>7</sup> "N.S.Kamboj, *Control of Noise Pollution*, Deep & Deep Publications, New Delhi, 1993 (pg 19)"



remedies have been discussed in detail with case laws. Still there is a need of awareness between the general public to work together on the environmental problems. Although the judiciary has explored the idea of notional extension, which effectively broadens the area of research and the scope of getting justice through it.

### SCOPE OF THE STUDY

This research work seeks to analyse the challenges faced while seeking remedy under law of tort for any environmental damages mainly focusing on the pollution occurs because of noise. The findings of this research paper have to be seen in light of some limitations, since the area under study is vast, the researcher undertakes to study only the major analysis of the remedies available for the damages under law of torts, also the important elements of a noise nuisance. To explain the research questions that the researcher has mentioned with reference to the laws pertaining in India, there is a reference to the appropriate case laws. On further research more information is gained on the difficulties faced by a common man when there is no specific act present for the noise pollution. There is a need to take the pollution related issues seriously by the lawmakers. Although the judiciary has explored the idea of notional extension, which effectively broadens the area of research and the scope of getting justice through it. The paper also addresses the help one can get through law of tort and how it is important in the cases of environment nuisance. Further in the paper a defence theory has been discussed as well with the help of various case laws.

### RESEARCH METHODOLOGY & SOURCES OF DATA

The researchers used Doctrinal Research Methodology in this study since the research was conducted on a legal proposition or propositions by examining existing statute provisions and cases and utilising reasoning power. The researchers dug deeper into various legal principles and concepts from various sources such as cases, precedents, and statutes to arrive at a final conclusion. It should also be noted that the researchers attempted to find definite legal answers via research from law books, statutes, legislation, commentaries, and other legal documents, all of which fall under the category of "secondary sources."

The research began with a legal proposition as a beginning point, followed by an analysis of the objective for delivering the legal propositions. Following that, the various secondary sources mentioned earlier were used to separate the useful information from the chaff, and a problem/challenge in relation to the topic was identified and thoroughly analysed using the secondary sources, and finally, a complete answer to the question that was posed in the beginning was provided using rational interpretation and logical reasoning, as well as suggestions. It's also worth noting that this is purely theoretical study, with no fieldwork or experiments.

For the purposes of this study, the researcher used doctrinal method of research to identify and locate relevant facts and information. A qualitative investigation of the facts, as well as an overall critical and conceptual evaluation of the judicial answers in the subject matter, has been undertaken in order to explore the issues at hand as well as their potential breadth. In India, secondary data collecting based on case laws and other such statements and interpretations has been used



to track the growth of judges' reactions and the effect of societal norms. The study is mostly non-numerical in nature, and information was gathered through several legal sources such as Jstor, Westlaw, Lexis Nexis, Hein Online, and SCC Online.

## REVIEW OF LITERATURE

For the purpose of studying existing literature in the present field of study, along with examining the available scope and framework of law of tort and other laws related to noise pollution, several books, research papers, scholarly articles and landmark judgements have been referred. Spotting shortcomings and bridging the lacunae is another motive for considering the literature.

**Nagahiro T, Mohan Katyal, G.R. Chhatwal, T. Katyal, M. Satake, "Encyclopedia of Environmental Pollution and its Control, (Volume 3) Anmol Publications Private Ltd, New Delhi, 1995"**, this literature tells how with the remarkable growth of science and technology, today's metropolitan centres have developed not just in size but also in the way of the living circumstances they give. This has resulted in a growing public awareness of noise pollution, which we have accepted in our daily life. Studies is been carried out in this literature to determine the extent of the harm caused by noise from various natural and man-made sources, particularly transportation. This literature is an attempt to provide a comprehensive review of noise pollution-related legislation and domain in order to make this article relevant to academics, planners, administrators, and others involved in the development and enforcement of laws. **"N.S.Kamboj, Control of Noise Pollution,**

**Deep & Deep Publications, New Delhi, 1993"**, this literature addressed the issue of how In today's free global market economy, companies and industries are use dangerous waste materials. These companies are undoubtedly important for the country's economic development and prosperity, but they also pose a threat to human life and the environment. **Powell Vincent, The Legal Companion: Awesome Lawsuits, Judicious Judgements & Terrific Torts, Chrysalis Publications, 2005,** From lawbreakers to lawmakers, this varied literature explores the legal world's eccentricities, idiosyncrasies, origins, and tales, this literature offers an informative and preceptive description of all the aspects and dimensions of law and its interpretation. I have no doubts that it would not only represent law students but also judges, and help them with various aspects of how the law of tort and its remedies are helpful and can be used in making decisions and giving judgements and also with the help of the recent case laws, this work has extensively reviewed and updated in the field of interpretation of various remedies for environment pollution. **"Roger, Butterfield and Jessica Holroyd(2000), Statutory Nuisance, Publisher: Informa Professional Monitor Press"**, this literature is an extensive piece covering all kind of statutory nuisance and it was very helpful in the field of environmental law. This literature addresses the layout of how laws should be for nuisance related to noise, air and water. **"E.P, Odum, Pollution and Environmental Health, Fundamentals of Ecology, W.B. Saunders Company, London, Third Edition"**, this literature talks about the unwanted health problems people are facing because of the different kinds of pollution and how gradually it is increasing. It has also



mentioned that how important it is to make the coming generation understand about the fundamentals of Ecology, of the land we are living in, so that the change at least can be started somewhere. **S.K. Khanna, M. Gopal, A.K.Gupta, Nomographic procedure for road traffic noise evaluation, Indian Highways, 1984**, this research paper states that When heterogeneity is present, traffic speed variance is dramatic when compared to a homogeneous traffic flow. This research paper is the result of research conducted on numerous roads in the Indian states of Telangana and Andhra Pradesh with the goal of constructing a complete noise prediction model that takes traffic and route parameters into consideration. This paper was really helpful to understand how noise has affected us at different levels. **“Joel Franklin, Brenner, Nuisance Law and the Industrial Revolution, 1974, 3rd Journal of Legal Studies”**, this research paper talks about the Nuisance Law and the objective of protecting peace, sanitation, pollution, good relations in the neighbouring. It also tells how in the ancient period people use to maintain peace and pollution. Nuisance law, in its early English form, was founded on property law and provided plaintiffs with complete safety and protection: either the nuisance arose and an order was made, or the judges avoided issuing an order by ruling that no issue exists. **“Wignall, Gordon (2009), Nuisance: Law and Practice in Property and Environmental Claims, Publisher: Jordan Publishing (GB)”**, Whether it's floods, subsidence, noise, odour, or other environmental nuisances, “the law of nuisance continues to adapt in response to current needs and remains an efficient way of resolving damage to and intervention with land”. In the absence of (or in addition to) an injunction, the common law can give relief

from the pollution in the form of an injunction or damages, or an abatement notice can be filed under the Environmental Protection Act 1990. The purpose of this work is to lay forth the broad principles that govern common law (both public and private) and legislative nuisances, as well as the procedures for obtaining remedy from the nuisance. This literature elaborates with how these fundamental concepts can be implemented to the most prevalent types of property interference and destruction. Key legislative information and the writer's own precedents will be used to complement it. **“S. P. C Plowden (1977), Evaluation of noise nuisance: A study of willingness to receive payment for noise introduced into the home (Supplementary report - Transport and Road Research Laboratory)”**, This research study provides an overview of the evolution and use of strategies for valuing vehicle noise nuisance. The emphasis is on the more recent assessment of discrete preference methods and the extra insights they may provide in comparison to more classic revealed preference approaches. The author and colleagues conducted investigations to value road traffic noise in Lisbon and Edinburgh, as well as aircraft noise in Lyon, Athens, Manchester, and Bucharest as well as the literature. **“Paul Burrows, Nuisance, Legal Rules and Decentralised Decisions: a Different view from the Cathedral Crypt, The Economic Approach to Law, London”**, The authors have written a comprehensive introduction that aims to provide a broad overview of the laws related to Nuisance. They begin with a quick overview of some of the basic ideas used in economic analysis, before moving on to a thorough and impartial assessment of the law and economics literature, as well as the virtues and limits of economic analysis in



law. The basic norm, according to this study, is that a person may utilise his or her land or personal property in whatever way he or she thinks suitable. However, there are exceptions to this rule. The owner must make appropriate use of his property. When an individual uses his property to create substantial harm or irritation to a reasonable neighbour, it is called a nuisance. dust, odors, smoke, noise and airborne pollutants, as well as water pollutants and dangerous chemicals, have all been deemed nuisances.

### IMPORTANT ELEMENTS OF A NOISE NUISANCE UNDER LAW OF TORTS

“In the absence of proper statutory provisions that fail to deliver appropriate legal solutions, tort and environmental lawyers have viewed tort law as a source of potentially robust and flexible remedy against community-based social and environmental offences like noise nuisance for the past twenty-five years”.<sup>8</sup> Specifically where the statutory leads “for redress are deficient and feeble, attention has turned toward restoring the vitality of public nuisance as a supplemental or alternative cause of action”<sup>9</sup> As a result, when a legislative remedy fails completely to provide justice due to lack of funding for appropriate enforcement, the law of tort steps in. The basic goal of tort law in this case is to strike a balance between two opposing interests<sup>10</sup>: “the defendant's right to use his land as he likes” and the neighbour’s right not to be inconvenienced. “It's worth noting that not all obstruction can be stopped, and most individuals are expected to put up with a

certain amount of annoyance in the name of peaceful cooperation. Only when the defendant has put his land to an improper use and the asserted nuisance causes physical damage to the plaintiff does an intrusion or interference become illegal”.<sup>11</sup> This is either since many of the factors used to determine whether a defendant's use of property is reasonable are unnecessary in the case of such injury, or because such harm frequently tilt the scales irreversibly in favour of the plaintiff.<sup>12</sup> In the instance of resources vandalism, on the other hand, the claimant must show a considerable interference with regular ease and ease of life that would be detrimental to the normal person, and it is in this light that the balancing process becomes even more important.

Furthermore, it's worth noting that the claimant's remedy available for noise of nuisance is an injunction rather than compensation. Unfortunately, because compensation are a type of equitable remedy, they are awarded on a flexible basis. Even if an illegal nuisance may be established, they may be denied.

It is important not to overestimate the extent to which judiciary deny relief when a nuisance has been proved. In the great majority of situations, when the plaintiff can show the conduct of a nuisance, he will be successful in getting an injunction, although the procedure is heavily reliant on the judges' discretion. Despite the commission of an actionable noise nuisance, the judge's ability to deny a claim for immediate remedy such

<sup>8</sup> “Powell Vincent, *The Legal Companion: Awesome Lawsuits, Judicious Judgements & Terrific Torts*, Chrysalis Publications, 2005, (pg 71)”

<sup>9</sup> “M.Susan, Booker, *EC says Ssshhh! Environmental Health Perspective*, (Volume 109)”

<sup>10</sup> “Joel Franklin, Brenner, *Nuisance Law and the Industrial Revolution*, 1974, 3rd Journal of Legal Studies, (pg 404-434)”

<sup>11</sup> *Ellison and Headlong Vs. The Ministry of Defence*, (1997) 7 Bliss 13

<sup>12</sup> *Millar Vs. Jackson*, (1977) QB 966



as an injunction allows the defendant to continue the illegal act.<sup>13</sup>

## LAW OF TORT AS A REMEDY FOR ENVIRONMENTAL POLLUTION

The "Environmental Protection Act of 1986" is a federal statute that prevents environmental pollution. Following the tragic and awful Bhopal Gas Tragedy, this law was passed. Although it appears that "the Environmental Protection Act" is sufficient to address concerns of air, land, and water contamination, the act's scope is really somewhat limited. It simply indicates that the act works just as a deterrent, but tort law also functions as a remedy. The only way for victims of ecological destruction to seek justice is via compensation.

Furthermore, because the severe approach to the notion of "locus standi (cause of action)" is disrupted by the requirement of a 60-day notice, the perpetrator has ample time to destroy all kinds of evidence or mistakes on his side, this law creates a loophole.

Large enterprises (for example, chemical factories) regularly contaminate the environment, harming people and/or their property. It is difficult for a person to depend on laws for protection and security due to the high expense of litigation. The statutory protection given to them is insufficient. Individual claims are best served by law of tort, which focuses on paying the affected party. It is still effective after so many years since independence.

In Conclusion, in addition to laws, the law of tort gives a legal basis for seeking relief when someone is injured as a result of another's environmental degradation. We all

know, however, that tort law can only be used when an individual's property or body is harmed. Because pollution has such a huge influence on the environment, law of tort can only be used when there is a harm to the environment.

## REMEDIES UNDER LAW OF TORT

Law of tort is basically based on the principles of "*sic utere tuo ut alium non laedas*" which means utilize your property in such a way which should not harm others. Despite the fact that law of tort does not directly address pollution control, regulations for pollution control can be established and successfully applied using ideas derived from specific areas of the law. There are majorly four categories under which environment related cases fall under-

- **NUISANCE**

It might be anything that bothers, hurts, or offends you. Any illegal infringement with a human's claim to the totality of property or any claim on or in connection to it, according to common law concept, is a nuisance. The defendant's acts must be illogical in order for an impediment to be called a "actionable nuisance." There are two types of nuisances: private and public. As a result, irritation is defined as behaviour that interferes with the health, safety, or comfort of others. Interference can be caused by heat, smoke, noise, smell, gas, fumes, diseases, vibrations, and other things. The foundation of a private nuisance action is that the accused person's use of his or her land causes unreasonable and unnecessary annoyance.

A public nuisance is an unreasonable infringement of a public right, or an act or

<sup>13</sup> "Paul Burrows, *Nuisance, Legal Rules and Decentralised Decisions: a Different view from the*

*Cathedral Crypt*, The Economic Approach to Law, London (pg 167)"



omission that gravely jeopardises a group's security, health, reasonable comfort, standard of living, or convenience. These activities include performing trades that generate offensive odours, unpleasant noises, dirt, disturbances, and the accumulation of filth that harms a neighborhood's health or habitability.

In the case of *St. Helen Smelting Vs. Tipping*<sup>14</sup> Plaintiff's plants and shrubs were harmed by fumes from defendant's manufacturing work. The Court decided that such damages constituted a cause of action since they caused property harm. In the instance of property damage, any reasonable hurt will enough to justify a legal action.

In the case of *Ram Baj Singh Vs. Babu Lal*<sup>15</sup>, In front of a doctor's chamber, someone constructed a brick grinding machine. "The machine produced a lot of noise and dust, which fouled the air and penetrated the medical practitioner's consulting room, causing bodily discomfort to the doctor and his patients. According to the Allahabad High Court, this is a private nuisance that can plausibly be considered to cause hurt, inconvenience, or irritation to a person. Noise pollution is defined as the exposure of reluctant people to unsafe and damaging levels of noise. It is also known as noise pollution, and as such, it is subject to law of tort". No person may use his constitutional right to freedom in such a way that it causes annoyance to others or becomes a health hazard activity.

In the case of "*Free Legal Aid Cell Vs. Govt. of NCT of Delhi*"<sup>16</sup>, the petition was filed in public interest by the group of some activists. The petition's major complaint was that

children and adults are exposed to physical and emotional health risks as a result of fireworks events in use at festivals and weddings. It was also claimed that noise pollution has become a common occurrence as a result of the excessive use of loudspeakers, hurting individuals' physical and mental health and nuisance is being caused. The High Court of Delhi observed and stated that the impact of noise on health is a topic that has yet to receive the full consideration it deserves from our judiciary. Noise can be considered a pollutant since it pollutes the environment, creates annoyance, and has a negative impact on an individual's health if it surpasses an acceptable limit.

#### • NEGLIGENCE

Another particular wrongdoing on which a common law action to avoid contamination might be brought is negligence. Negligence occurs when there is a responsibility to take care and that obligation is not done, resulting in injury to another person. When someone acts negligently, they cause someone else to discomfort, suffer a loss, or aggravation. The claimant must show

- Breach of duty
- The defendant had a legal obligation to take adequate precautions to avoid the damage claimed
- Impactful injury must have been caused by the breach of duty in reality, and it must have been foreseeable of the result of breach.

<sup>14</sup> (1865) 11 HLCas 642

<sup>15</sup> AIR 1982 All 285

<sup>16</sup> AIR 2001 Delhi 455



In cases of negligence, the difficulty of showing a causal relationship between one's negligent conduct and loss to others is a problem. It's also difficult to demonstrate if the injury's impact remains hidden for a lengthy period of time.

In the case of "*Naresh Dutt Tyagi Vs. State of UP*"<sup>17</sup>, Chemical pesticides were kept in a basement in a residential neighbourhood. The fumes from the pesticides poured into the next property through the ventilators, killing three children and a newborn in the mother's womb. The case was ruled to be a clear example of carelessness and negligence.

In the case of *Nichols and Marsland*<sup>18</sup>, "The defendant possessed a number of man-made lakes on his property, none of which had been negligently constructed or maintained. Some of the reservoirs overflowed due to the unusually strong rain, and four rural bridges were washed away. The defendant was found not responsible since the water escaped due to an act of God".

#### • TRESPASS

It basically means that a deliberate infringement of the plaintiff's rights to the property of his sole possession. The invasion might be direct or through the use of any other object. And for the same two things must be proven-

- the intention of the wrongdoer
- Such intervention must not be consequential and it should be direct

Trespass varies from nuisance in that person who is trespassing can be prosecuted without

requiring proof of injury, whereas nuisance does. Trespass is defined in the matter of ecological issues as the deliberate disposal of waste in such a manner that it will be carried to complainant's land by natural processes. Gases or even vapours that aren't visible might be the cause.

The primary solutions for these environmental torts are injunctions and unliquidated damages, or both. Damages are monetary recompense for wrongful behaviour. These losses might be moderate, major, or exceptional. When alternative remedies fail and the prevention of a wrongful act is crucial, a court may issue an order with or without damages. An order is a judicial mechanism that prevents someone from violating or threatening to violate another person's rights. Injunctions are divided into two categories: temporary and permanent.

In the case of *Fairview Farms, Inc. Vs. Reynolds Metals Company*<sup>19</sup>, On the plaintiff's land, there were chemicals and airborne liquids that were considered trespass. The defendants were found guilty, but no injunction was issued since they corrected their position to ensure that no additional injury was caused.

In the case of *Sammons Vs. Gloversville*<sup>20</sup>, Sampson Sammons' New York property was bordered by a very polluted Cayadutta Creek. The city of Gloversville poured its sewers and drains into the creek upstream, polluting the water and spreading dirt on the creek's beds and banks. The city of Johnstown, as well as many tanneries, did as well. Mr. Sammons took Gloversville to court to

<sup>17</sup> 1995 Supp (3) SCC 144

<sup>18</sup> (1876) 2 ExD 1

<sup>19</sup> 176 F. Supp. 178 (1959)

<sup>20</sup> "*Sammons v. City of Gloversville*, 81 App. Div. 332, 81 N.Y.S. 466 (N.Y. App. Div. 1903)"



prevent them from contaminating the stream or its banks any more. The trial court determined that the city's sewage disposal procedures amounted to a continual trespass that caused Mr. Sammons' property rights to be seriously harmed. It imposed an injunction banning Gloversville from contaminating Mr. Sammons' property by releasing its wastewater into the stream for a year. The court reserved the ability to prolong the injunction if the city did not develop a new sewage system or gain legislative remedy within a year. The ruling was upheld by the Appeals Court. As the trial judge emphasised, enjoining trespass was standard procedure in New York, regardless of the public need of the offending works or the significant hardship that their prohibition could cause.

#### • STRICT LIABILITY

Anyone who brings something prone to causing damage if it escapes onto his property and gathers and keeps it for his own reasons should hold it in at his personal discretion, and when he does not, then that person is prima facie accountable for any damage that comes from its escape. The fact that the object fled without that person's deliberate action, default, or ignorance, or that he was unaware of its presence, is not a protection under this principle. The theory of strict responsibility is often called as the concept of no-fault liability since it assesses culpability without the defendant's fault, and this aspect of the concept is extremely important in cases involving environmental pollution. Explosions, toxic vapours, fire, environmental toxins, electricity, oil, colliery trash, and other elements can all contribute to

it. All personal and property damages are covered under this rule.

“The disadvantage is that the plaintiff is responsible for proving his or her case. It is extremely difficult to show and present evidence against defendants in trials involving environmental damage”. In the case of *Rylands Vs. Fletcher*<sup>21</sup>, the doctrine of Strict Liability was discussed in detail.

*Union Carbide Corporation Vs. Union of India*<sup>22</sup>, is a case known as the Bhopal Gas Tragedy. In this case many people perished in Bhopal as a result of a methyl isocyanate gas leak. "Millions of individuals died instantly after coming into touch with the gas. The Bhopal gas disaster contaminated the water and soil, rendering two of the most vital components for living worthless. Generations have suffered because of the tragedy and still continue to suffer from birth abnormalities as a result of pollution of the land and water". Because such serious harm had been done in this instance. India recognised the significance of checks and balances and passed the Environment Protection Act of 1986. Because the defendant's duty of care and culpability was vast and inexcusable, this case established the notion of absolute liability. There is no defence that can justify the deaths of millions of people.

#### MONKEY IN THE SNAKES SHADOW A DEFENCE THEORY

The first statutory nuisance legislation was enacted in the middle of the 19th century. Statutory provisions are special provisions which are defence to nuisance enacted in several Acts of Parliament. It's worth mentioning that a law can shield a person

<sup>21</sup> [1868] UKHL 1

<sup>22</sup> 1989 SCC (2) 540



from being found accountable under a tort law. If the conduct complained of is lawful, it may give the claimant with a full protection or exemption from nuisance claims, such as exempting a government authority, including a local authority, from responsibility for wastewater discharges, bad smells, noise, and other nuisances. It must be mentioned that, “No action lies for doing that which the legislature has authorised, if it be done without negligence, although it occasions damage; but an action does lie for doing that which the legislature has authorised, if it be done negligently.”<sup>23</sup> For example, in the case of *Allen Vs. Gulf Oil Refining*<sup>24</sup>, The Gulf Oil Refining Act of 1965 authorised the defendant to construct and operate an oil refinery. “The complainant was one among the neighbours in the nearby region who had been harmed by the refinery's foul odours, vibrations, and objectionable noise levels. The defendant pleaded government authority, and the House of Lords held by a majority that the law expressly or by necessary implication gave authority to build and operate the refinery, and that this authority gave the defendant immunity from any nuisance that might be the inevitable result of building a refinery on the land, however carefully sited, constructed, and operated. As a result, the issue is one of statutory interpretation. It should be highlighted, however, that statutory power is subject to human rights law review; if the authorised action infringes on a person's right to privacy under Article 8(1), the government will be required to defend it”.<sup>25</sup> further the case *Nestle Vs. City of Santa Monica*<sup>26</sup> is a landmark case which deals with noise pollution. “In this case the Property owners

near Santa Monica Airport filed the lawsuit for property and personal injury damages, claiming that vibrations, fumes, and noise from planes landing and taking off at the airport damaged their property, interfered with their amusement of it, and caused them pain, suffering, and emotional distress. The nuisance hypothesis was rejected by the trial court due to governmental immunity in the existence of statutory power. In the case of the nuisance claim, the Supreme Court ruled that Government Code section 815 does not grant protection to the town for operating an airport in a way that constitutes a nuisance. In this case the discussion of the court indicates that, Public policy does not preclude the imposition of liability on the City.”

#### CONCLUSION

Noise pollution is still a big issue, despite years of research and attempts at control. It has "extracted a high price in terms of human pain and economic cost. The outcome of the statute and case law generated in reply to the challenge is a highly confused conclusion." Laws are created to address the problem of noise pollution, but they contain purposeful loopholes that shield the wrongdoer. Statutory provisions were intended to serve as a buckler to protect the public interest, but in practise they serve as a sword to protect nuisance creators. As a result of this split, there has been a general reluctance to the problem, as well as several failed individual measures to reduce noise annoyance.

Indeed, tort responsibility ensures more attention to the issue, but when noise becomes a cause of more immediate irritation, such as an environmental concern,

<sup>23</sup> “As per *Lord Blackburn Geddis Vs. Proprietors of Bann Reservoirs* (1878) 3 App Cas 430 at 455”

<sup>24</sup> [1981] AC 1001

<sup>25</sup> “*Hatton v United Kingdom* (2003) 37 EHRR 28”

<sup>26</sup> 6 Cal.3d 920 [101 Cal.Rptr. 568, 496 P.2d 480]



action requires strong legislative backing. International organisations should offer direction and approval for the development of a law of tort framework to address “noise nuisance”. In recent years, the tortious remedy for the elimination of noise nuisance has been limited to compensation. However, new rules and regulations must be drafted to include a "Polluter Prevention Cost" under law of tort for a wrongdoer, which will help to eliminate the source of noise based on expectation. Furthermore, sufficient funding should be set up to develop feasible noise compatibility planning initiatives. There are more remedies present but going forward with law of tort seems to be the best way to get rid of the problems one is facing because of the noise pollution. In India, people mostly prefer to let go of it and have become usual to the noise pollution but if one person will take it seriously gradually others will too. As a result, it is reasonable to conclude that the history of law of tort in regard to environmental contamination has opened the way for individuals who have been damaged by it to obtain compensation. It has also issued a warning to enterprises dealing with dangerous chemicals about their responsibilities. This progress has paved the road for better justice system.

### SUGGESTIONS

- There should be a separate act for noise pollution. In India, we only have “the Noise Pollution (Regulation and Control) Rules, 2000” and considering Noise pollution as a major harm to the society there is a need of a separate act with strict laws and punishment.
- For the regulation and prevention of noise pollution, public awareness is essential. Because of their illiteracy, the majority of

people have no knowledge how to reduce noise pollution. In this regard, television, radio, the internet, and newspapers should run a public awareness campaign on noise pollution.

- There should be more plantation as it can reduce the noise pollution. Plants are considered to be more efficient absorber of noise and more effective with the noise of high frequency.
- There should be establishment of Environment Court as well. We have separate courts for every kind of problem which human being faces then why not for the problems related to the Environment.

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