Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

Public and Private Nuisance - A Jurisprudential Analysis

Harsh Jain[a]

[a]Dharmasashtra National Law University, Jabalpur, India

Received 11 May 2021; *Accepted* 25 May 2021; *Published* 31 May 2021

I agree with the laws for the torts of Nuisance and thus very strongly believe that "the liberty of an individual must be thus far limited; he must not make himself a nuisance to other people". The researcher in this article has tried his level best to complete his research on the topic of private nuisance and he has jurisprudential analysis of the same. The author first gave the basic introduction and then, tried to explain as to what amounts to the nuisance, nuisance as per the ideology of various thinkers' general idea behind it, how it can be defined lawfully, the elements required to prove a nuisance, and last support the same with the help of the various case laws. Further, he had provided with a brief historical breakthrough regarding the evolution and development of the torts of nuisance under the common law or the English legal system and what the better explanation of the same, he illustrated some of the important case laws. Finally, he explained what public and private nuisance are, the general difference between them, and supported both with the precedents and case law. While explaining the private nuisance he also explains what the type or category under the private nuisance is, the essentials of the private nuisance lawsuit, what are the general defence available for the defendant, and which are acceptable by the court of law, such as prescriptive or the regulatory right to commit nuisance, or the act commit is under the statutory authority. And at last, he discussed the remedies available for the claimant against the tortfeasor, such as the injunction, damages, or both, and the one more remedy which is generally not preferred by the law i.e. abatement.

Keywords: *tort, nuisance, jurisprudence, public, private.*

INTRODUCTION

"An act not warranted by law, or an omission to discharge a legal duty, which act, or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects"[1]

Nuisance is defined as the tort under common law its origin can be derived from the French word 'nuire' meaning of which is to 'annoy' or 'do hurt'. In general, nuisance is referred to as disturbances. According to the legal theorist Winfield, nuisance is a huge thing and involves many aspects in it thus an exact definition of it is and will be incapable and incomplete. But as per the law of torts, Nuisance is broadly defined as to be any act or omission which resulted into hereditaments or tenements of another, or annoyance of the lands or to the hurt the person's right on his premises, but which is not amounting to the trespass. There are two essentials for the nuisance, which are the firstly, there must be a wrongful act and secondly, there must be some loss or damages incurred by the plaintiff because of that action or act of the defendant.

The history of both the torts (both the type of nuisance) can be traced from the resign of the Henry III, which are slightly or harshly exaggerated by several logical shifts concluded the time which seems to become more stringent than it was earlier when there was no importance of the individual's rights and thus, they were not protected. Each tort says that the burden of proofs to prove the claims lies solely on the plaintiff or one for is claiming that the tortfeasor or defendant's act caused the interference in his/her legal rights. The concept of private nuisance is very poorly and openly defined, and for the reason being, It has received much criticism with academics arguing that the concept of private nuisance is thus open for judicial interpretation and manipulation. [i]

TORT OF NUISANCE

Nuisance

[1] Sir J F Stephen, *Digest of the Criminal Law* (5th edn, Franklin Classics 2018) 120

Nuisance is defined as the tort under common law its origin can be derived from the French word 'nuire' meaning of which is to 'annoy' or 'do hurt'. In general, nuisance is referred to as disturbances. According to the legal theorist Winfield, nuisance is a huge thing and involves many aspects in it thus an exact definition of it is and will be incapable and incomplete. But as per the law of torts, Nuisance is broadly defined as to be any act or omission which resulted into hereditaments or tenements of another, or annoyance of the lands or to the hurt the person's right on his premises, but which is not amounting to the trespass[2].

Trespass is a clear cut or direct interference and as per the Indian laws and regulation it is "actionable per se" but on contrary, nuisance is generally momentous and substantial thus action can only be initiated after the proof of actual damages, thus both are mutually exclusive, and which means either of them can be caused simultaneously. Nuisance ordinarily means an illegal, unlawful, or prohibited intervention along with an individual's use or amusement of the property or premises or some other rights of the person related to it (owner) e.g., actions which are intervening with safety, health, or comfort, of the person in the way of noise, electricity, vibration, smell, water, gas, heat, excavation, sewer, obstructions, smoke, and others.

According to Salmond, "The tort of nuisance ordinarily consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g., smoke, noise, water, vibration, fumes, diseases, electricity, germs, gas, animals, and heat."

Lawfully, the term Nuisance can be used to describe an act or omission in 3 ways:

1. On the way to portray an act that is dangerous, injurious, or frustrating to some others in some way or other (e.g., a smoking chimney, or indecent conduct)
2. To portray the injure (damages, harm, or detriments) caused due to the pre-mentioned activity, ailments, or the circumstantial condition (e.g., objectionable odors or loud noises)
3. To refer to a legitimate unlawful and legal obligation that evolves from the permutation of the two. However, the "interference" here does not directly mean the interference by some

[2] Justice G P Singh ed, *Ratanlal & Dhirajlal on Law of Tort* (26th ed, LexisNexis 2012) 603

through stealing of the land (unlawful detention) or the trespass by a person into the plaintiff's land. Instead, it results from the activity of another person's own land, but it affects the employment of the plaintiff or its land.

Note: A tort of the nuisance also may perhaps be caused by the act of negligence or carelessness, and there are many cases in which the similar or identical act or the omission will sustenance and nourish by backing an act of any of the two kinds, but largely talking, these two programs of actions are separate to an extent, and the evidence to proof is obligatory to back (support) them is unlike. Nuisance is by no means any department of the negligence law thus it is on no ground to defend that all fair or reasonable and good enough care to avoid the act was carried by the defendant.

ESSENTIALS OF NUISANCES

1. **Wrongful act:** basically, any act completed or done with the intention of the doer to cause the intrusion through violation of the legal rights of another (plaintiff whose legal rights are infringed for this instant) is known to be a wrongful act.
2. **Loss/damage/annoyance caused to another individual:** Loss or damages or annoyance should be such which the rule should consider as significant information for the allegation and claim.

2.3 Case law:

1. In, "Ushaben v. Bhagyalaxmi Chitra Mandir"[3], the plaintiff sued the defendants for a restriction (permanent in nature) through the injunction the filmmakers to further presenting the film "Jai Santoshi Maa". It was alleged from the plaintiff that the demonstration of the presented film was a nuisance because it hurt the religious feelings of the plaintiff because the goddesses Parvati, Laxmi, and Saraswati were defined or shown as jealous and were mocked and derided.

[3] *Ushaben v Bhagyalaxmi Chitra Mandir* AIR 1978 Guj 13

The court held that hurt to the religious sentiments or belief was not an actionable wrong for which an action against the defendant can be entertained. Furthermore, the plaintiffs have all the rights and were free to do not watch the movie again.

2. In "Halsey v. Esso Petroleum Co. Ltd."[4], the defendant's depot (a type of warehouse) uses to trade with the fuel oil in its illumination from the smokestacks (chimneys) projected from the house of the boiler, dust of the acid which consists of the sulphate was radiated through the emission and which were instantly failing outside the house of the plaintiff. There was certainly evidence which proofs that the clothes which were hung out for drying in the house garden of the plaintiff were damaged because of the smuts or ashes and it damaged the plaintiff's car paintwork he kept that on the main road highway which was in front of the door of his family house. The depot generally emitted a caustic and disgusting- a kind of repulsive odor of oil which went further than a circumstantial aroma smell and was further than would impinge on or affect a delegate and hypersensitive person, but the appellant, in this case, had not experienced any injury or damages in respect to the health from the odor of the air released. Throughout the night time, there was the commotion of the noise from the tanks of the boilers which at its zenith (peak) caused the vibration of the doors and windows of the plaintiff's house and resultantly precluded the plaintiff's sleeping and many times napping too. A lawsuit was filed by the plaintiff's attorney for the tort of nuisance by smell, acid smuts, and noise.

   The court held that the respondents were held liable to the plaintiff as per facts, in respect of emission of noise, acid smell, and acid smuts.

Example: Mr. A starts a wheat flour factory and established a manufacturing unit on his private property or premises. The massive noise and dirt from the manufacturing industry disrupt or annoys' his neighbour Mr. B, all along with the contaminating by polluting his house. Here as both essentials are meet thus Mr. A commits nuisance by disturbing Mr. B.

EVOLUTION AND DEVELOPMENT OF NUISANCE IN THE COMMON LAW

[4] *Halsey v Esso Petroleum Co Ltd* (1961) 2 All ER 145

When we talk about nuisance in the common law, it is a part of the law of torts under the English Law and which is largely alienated into two torts; private nuisance, in this, the defendant's act is generally "causing a substantial and unreasonable interference with a [claimant]'s land or his/her use or enjoyment of that land"[5] and public nuisance, where the defendant's act "materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects"[6]; public nuisance is also considered to be as the crime. The history of both the torts can be traced from the resign of the Henry III, which are slightly or harshly exaggerated by a number of logical shifts concluded the time which seems to become more stringent than it was earlier when there was no importance of the individual's rights and thus they were not protected. Each tort says that the burden of proofs to prove the claims lies solely on the plaintiff or one for is claiming that the tortfeasor or defendant's act caused the interference in his/her legal rights, which was unreasonable, and in some cases, the defendant's intention can also be taken into the consideration while listening to the case. A simple and meaningful difference is that private nuisance does not ask an individual or claimant to prove that any personal injury or damages have been suffered by him or her, while public nuisance does.

The concept of private nuisance is very poorly and openly defined, and for the reason being, It has received much criticism with academics arguing that the concept of the private nuisance is thus open for the judicial interpretation and manipulation; thus one of the well know English academician, *Conor Gearty* has engraved in some books that the "Private nuisance has, if anything, become even more confused and confusing. Its chapter lies neglected in the standard works, little changed over the years, its modest message overwhelmed by the excitements to be found elsewhere in tort. Any sense of direction which may have existed in the old days is long gone". In addition, what *Conor Gearty* has engraved, it also has been claimed many times that the private nuisance has "lost its separate identity as a strict liability tort and been assimilated

[5] Vera Bermingham & Carol Brennan, *Tort Law* (OUP 2008) 225
[6] *Ibid* 241

in all but name into the fault-based tort of negligence"[7]. Along with both public & private nuisance "have little in common except the accident of sharing the same name"[8].

HISTORICAL BREAKTHROUGH

As already discussed above that the presence of tort of both the nuisance can be traced from in history, given that the time of *Henry III,* with the number of modifications, and for the greatest part of them were purely technical[9]. Also, we discussed that it, in the beginning, arose from the Latin word 'nocumentum', and then with the time as the French nuisance, with the resign of "*Henry de Bracton"* at the outset of the tort of the nuisance was broadly defined as a violation or breach of easements rights of an individual. The tort was as per the monetary status quo of that resign (period), safeguarding and preserving the claimants (plaintiff) in opposition to their neighbors' civil rights and privileges to cultivate the land as per the wish of the owner, and which was been labelled or designated as "rural, agricultural, and conservative". There stood primarily four types of remedies available to the claimant of nuisance; assize (inquiry or formal investigation) of nuisance, like to the inquiry or assize of original innovative (novel) disseisin, which was inadequate and was limited to circumstances or circumstances wherever the action or actions were taken by the defendant interfered with the seisin of the claimant; the action "goud permittat prosternere", where the property in dispute or interrogation and which is under interrogation was disaffected, isolated or withdrawn; the writ of trespass or encroachment to the enjoyment of the property; and the "action upon the case for nuisance", which with as the time passed on befitted and became the foremost and key remedy. This was why that remedy was much faster as compared to the other actions, injunction, or the writ, and not like them it did not necessitate both the parties to be freeholders or the owner of the property. But it was, nevertheless, restricted to damages inculcated by the plaintiff or the claimant, and nothing like the further remedies which were available did not make available for deduction or abatement.

[7] Gerry Cross, 'Does only the careless polluter pay? A fresh examination of the nature of private nuisance' [1995] Law Quarterly Review 445
[8] Conor Gearty, 'The Place of Private Nuisance in a Modern Law of Torts' [1989] Cambridge Law Journal
[9] Joel Franklin Brenner, 'Nuisance Law and the Industrial Revolution' [1974] Journal of Legal Studies 403

By the very beginning of the 17th century, a change in the judicial philosophy and POV had been witnessed which allows the protection of petitioner's amusement of their civil rights and privileges over their private land. also, it put upon a duty of care on the coalition that causes the nuisance to avoid or stop it: "as every man is bound to look to his cattle, as to keep them out of his neighbour's ground; so, he must keep in the filth of his house of office, that it may not flow in upon and damnify his neighbour"[10]. But throughout the 19th century and during the time frame of "industrial revolution", some more significant changes has been traced when can be witnessed as of now, rather than the previous test according to which it was expected standard of care from a company or an individual, but the different standards of care have been imposed on the persons and corporations as well. In reaching these judgments the court "effectively emasculated the Law of Nuisance as a useful curb on industrial pollution".

Case law: In the case of "*St. Helen's Smelting Co v Tipping*"[11], for illustration, a few justices "were explicit in suggesting that they were affected by the adverse effect of a more draconian view on the economic welfare of the country's industrial cities"[12]. This juxtaposed and disagreed along with the previous POV, which was that when legal responsibility or liability because of the breach of that responsibility was recognized traditionally for a circumstance or instance wherever the respondent's actions had affected as inhibited and affected with the satisfaction and gratification of the terrestrial land, the respondent would be responsible and accountable under the law, still inconsequential interference inculcated.

The decisions given by the court all through this phase varies, however, predominantly due to the conflicting and diverging judicial philosophies or POVs of the different judges and mainly because of the development or changes as per the time. While "A.V. Dicey" asserted that the prevailing way of life or philosophy at that point was one of "laissez-faire" express gratitude to the authority influence and impact of the economists & philosophers such as Michael W. Flinn, Adam Smith asserted that:

[10] *Ibid*
[11] *St Helen's Smelting Co v Tipping* [1865] 11 HL Cas 642
[12] Brenner (n 9)

"Another common error has been the assumption that the classical economists were the only effective influence on social and economic policy in the early and mid-nineteenth century. This is a curiously perverse view since it ignores powerful voices like those of Bentham, Chadwick, the social novelists, many by no means inarticulate members of the medical profession, the humanitarians, the Christian Socialists, and most sections of the many working-class movements. There was in short, nothing approaching a consensus concerning laissez-faire and state intervention, even in the very narrow social sector represented by governments, Parliament, and the press. In practice, the ears of ministers were assaulted by a confused babble of voices rather than bewitched by the soft whisper of a single plea for inaction"[13].

- 19th-century legislation included:
  - Nuisances Removal Act 1860 (23 & 24 Vict.)
  - Nuisances Removal Act for England (Amendment) Act 1863 (26 & 27 Vict.)
  - Smoke Nuisance (Scotland) Act 1865 (28 & 29 Vict.)
  - Nuisances Removal (No. 1) Act 1866 (29 & 30 Vict.)

TYPES OF NUISANCES AND DIFFERENCES BETWEEN THEM

Nuisance is of two types**:**

1. Common or Public Nuisance:

A public nuisance is considered as a crime, so it is classified as to the criminal wrong while tort of nuisance is generally a wrong against an individual to it is a civil wrong or wrong against an individual. A common nuisance is snooping with the privileges and rights of the community as a whole and is punished as an infringement under sec. 268, Indian Penal Code[14]. Hindering or blocking a public way by a drain (gutter), digging, or creating a structure on it all are examples of Common nuisance. A public nuisance is an offence that is punishable under criminal law to prevent multiplicity (varieties) of suits by the community at large. But in some cases, Common

[13] John P S McLaren, 'Nuisance Law and the Industrial Revolution – Some Lessons from Social History' [1983] Oxford Journal of Legal Studies 192
[14] Indian Penal Code 1860, s 268

nuisance may also become a tort of a nuisance so much as the persons suffering "special damages" are apprehensive, and thus for the same a civil right of action is also available to the person injured or incurred the damages. And here the term the special damages contextualize that the damages which are caused to a party in contradiction to the public at large[15]. For e.g., the electric pillar in the midway of the public road may trigger hassle and annoyance to the community. No representative or participants among the community, who must suffer due the same that they must change their root, or it acted as an obstructed to those can sue under the civil law as a private nuisance. But if a person had to suffer more damages than the damages suffered by the public at large, e.g., a person met with an accident and thus he can sue in tort. To instigate a civil action against the defendant as under the principle of public nuisance is concerned, proof of the special and damage is must or is an essential thing. The crux of all this is if a party can provide some of them proves of the special damages, it then authorizes the complainant to bring up a lawsuit or an action for what may possibly be a common nuisance otherwise.

Case Laws:

1. In *Doctor "Ram Raj Singh vs Babulal"*[16], a brick crushing, and manufacturing machine was created by the defendant & which was neighbored the site or the building of the clinic of the petitioner or claimant, who by profession was a medical practitioner. And machine established was generally used to generate the dust, which resultantly pollutes the nearby atmosphere. The dust exhaled through the brick manufacturing unit inserted in the consulting compartment of the medical practitioner and instigated a kind of substantial bodily inconvenience or aggravation to the petitioner and his patients, also a thin but dark red color layer produced by the dust is easily or apparently visible at the site.

   The court held that as the plaintiff succeeded in proving that the special damages were caused to him thus a permanent ban (injunction) through an order was issued by the court

[15] *Dr Ram Raj Singh v Babulal* AIR 1982 All 285, at 289
[16] *Doctor Ram Raj Singh v Babulal* AIR 1982 All 285

of law against the defendant (Bricks Manufacturer) curtailing him on or after operating his brick grinding machine there.

2. In "Rose v. Milles"[17], the offender (respondent) in this case had unlawfully chained his flatboat throughout a public worthy or controllable creek (stream). This congested or restricted the way for petitioner's barges resultantly claimant had to come in for substantial disbursement in the form of expenditure in discharging the cargo with the goods and also shipping the goods through the means of land. In the court of law, "it was held that there was special damage caused to the plaintiff to endorse his claim".
3. In "Campbell v. Paddington Corporation"[18], the petitioner was the holder of a premise or the property in the city of London (UK). Just from the front of the plaintiff's property that is the building, the funeral convoy parade of the "King Edward VII" was to pass from that highway (besides which the plaintiff's building was constructed). Through the windows of the applicant's building an uninterrupted view of the highways is visible and that is to say, the same view of the convoy parade could also be had. The plaintiff provided the window seats of the first and second floor to a few of the people and charged them with a certain sum of money for laying the seats. The defendant's company built a stance on the artery or the passing by highway, in forward-facing for the building of the plaintiff to allow the guest and member of the company to take a look at the scheduled king's procession before the date of the said procession, and which resultantly acted as the obstacle between the persons booked seat in her building and the procession to be passed, consequently of the obstruction, the plaintiff had to suffer a loss as he couldn't make a profitable deal out of that. As she filed a case against the corporation claiming the structure of the stand on the highway by the corporation had prohibited her for a profitable deal and resultant must compensate the damages suffered.

   The honorable court, in this case, held that the defendant is liable for the damages incurred by the plaintiff and thus compensates for the same.

[17] *Rose v Milles* (1815) 4 M '& S 101
[18] *Campbell v Paddington Corporation* (1911) 1 KB 869

The crux from all the three above stated case laws is that the burden of the proofs to prove that the damages suffered by the plaintiff are more from the damages agonized by the community at a large is solely lies for the plaintiff and without proving the same he cannot argue before the court to claim the compensation as the remedy for the damages incurred and for the better explanation of this, I would like to cite a case, which is "*Winterbottom v. Lord Derby*"[19]. In this circumstance and situation, the respondent's representative (agent) through the act created an obstacle by blocking a public footpath. The plaintiff filed a suit contending that every so often he had to go through by the way of an alternative route and even many a times he obligated to incur losses in the form of some payments in eradicating the blockade obstacle.

Court held that the plaintiff here cannot claim the recovery of the damages as he had not undergone more damage than may have been experienced by some of the other associates of the public at large. Kelley, Judge wrote her observation, "If we were to hold that everybody who merely walked up the obstruction, or who chose to incur expenses in removing it might bring his action for being obstructed, there would be no limit to the number of actions which might be brought."

2. Tort of Nuisance or Private Nuisance:

A private nuisance is a kind of nuisance, which is when the nuisance incurred infringes or affects the rights of a specific or an explicit person or individual by interfering in between and not the public as large. Unlike the public or common nuisance, a private nuisance usually affects the right of some person or individual as recognized by the public in general. Three essential elements need to prove to say that the private nuisance took place, which is, firstly, there is an unreasonable interference or intervention in the rights of an individual through the act or omission from the other person or entity. Secondly, Interference or intervention through the usage or custom or pleasure of premise or property, and lastly there are some damages or losses ached or agonized by the petitioner or claimant due to act of interference of the tortfeasor. Also, there are two basic defenses available for the defendants, which can be claimed to be protected through the

[19] *Winterbottom v Lord Derby* (1857) LR 2 Exch 316

consequences of the private nuisance, which are, prescriptive or the regulatory right to commit nuisance with the party or if the act committed was under the act of the statutory body and the damages are generally compensated through the available remedies, which are either by injunction (court order), damages or both and not an indictment.

TYPES OF TORT OF NUISANCE/PRIVATE NUISANCE

1. Damage or Destruction of the premises or property:

If in case, any type of property destruction or harm occurs, then any workable or rationally prudent injury will be more than enough to plea to bring up action against the tortfeasor. Generally, the nuisance under this category may arise from the manufacturing work, hazardous industries, chains, etc.

E.g., noise, dust, electricity, fumes, trees, filth, smoke, gas, fumes, animal, or water.

2. Physical Discomfort

If in a case in point, any type of bodily damage or discomfort, a person needs to prove three basic things, which are firstly ownership of the property where that discomfort arises. Secondly, what act is responsible for the damages or discomfort and who had done that act and lastly that act causes any kind of physical damages or discomfort to you. It includes both organic and everyday courses of action for the enjoyment of the private estate significantly or substantially meddling or intruding with the usual and commonplace luxuries or basic luxuries of human survival.

E.g., Running any business or trade which causes nuisance for others, impediment or hindrance of the light, etc.

ESSENTIALS OF THE PRIVATE NUISANCE LAWSUIT

(a) Unwarranted/ Unreasonable Interference:

A person holding property may cause damages or personal discomfort in the amusement or pleasure of the private prosperity in form of property through the intervention or the interference where it is reasonable or unreasonable but broadly speaking, not every interference is a nuisance in all the senses. To be tantamount to the nuisance, the interference caused, must be unreasonable and unwarranted. Every person has a right to leave with some smell, vibrations, noise, etc. so that people constituted as a member of the culture or community can have or revel in their private/own rights. If I own an apartment on the edge of the highway, I cannot go to court by filing suit for the difficulty or inconvenience caused due to the rush-hour traffic on a particular road. Nor do I have the right to sue the neighbor of mine, if he uses radio, which coincidentally laps with my study timetable and thus interferes with my academic studies. Until and unless the interference is reasonable or is not unreasonable, no suits can be filed, and thus no lawsuit be able to be entertained. "A balance has to be maintained between the right of the occupier to do what he likes with his own, and the right of his neighbour not to be interfered with."[20] If the intervention or interference meddled is undoubted, unreasonable, and unwarranted, then it is by no means a defense to be protected than it is for the public good or the benefits of the public at large. As stated by Thesiger, "LJ. In Sturges v. Bridgman"[21]: "what would be a nuisance in Belgrade Square would not necessarily be so in Bremond." To nuisance, it has just before being observed as to "what is reasonable according to the ordinary usages of mankind living in society, or more correctly in a particular society." An unwarranted or unreasonable action or pursuit cannot be forgiven on the account that the reasonable or good enough care had been undertaken to avert or prevent it from turning out to have to be a nuisance.

Case Laws:

1. In Radhey Shyam (X hereafter) v. Gur Prasad (Y hereafter)[22], Y was the plaintiff and they filed a suit in contradiction of Y for a permanent order (through the means of injunction) to forbid them from further installment the connection of the machinery unit and

[20] *Sadeleigh Denfield v O'Callaghan* (1940) AC 880, 903
[21] *Sturges v Bridgman* (1979) II Ch D 852, at 865
[22] *Radhey Shyam v Gur Prasad* AIR 1978 All 86

administrating a flour mill at the present sites, the plaintiff in this case allegedly said that running off the floor meal will cause a nuisance for them as they were also tenants for the first floor portion of the same premises in which the manufacturing unit was settled up and because of the noise caused by running the meal they will lose the peace, ton have which is their right and subsequently their health will also be unpleasantly affected.

The court, in this case, held that as the establishment of the flour mill will cause significant addition to the noise in an earsplitting neighborhood and may cause grave interference with the physical comfort of the plaintiff and thus plaintiff was succeeded in bringing up action through the injunction against the defendant for causing the private nuisance.

2. In "Ushaben v. Bhagyalaxmi Chitra Mandir"[23], the plaintiff sued the defendants for a restriction (permanent) through the injunction the filmmakers to further presenting the film "Jai Santoshi Maa". It was alleged from the plaintiff that the demonstration of the presented film was a nuisance because it hurt the religious feelings of the plaintiff because the goddesses Parvati, Laxmi, and Saraswati were defined or shown as jealous and were mocked and derided.

   The court held that hurt to the religious sentiments or belief was not an actionable wrong for which an action against the defendant can be entertained. Furthermore, the plaintiffs have all the rights and were free to do not watch the movie again.

Sensitive Plaintiff

If an action performed which is if not sensible or reasonable can't become or call as to be unreasonable and actionable (eligible to bring up an action) when some damages incurred be it be substantial and sensible and is caused just because the plaintiff is very sensitive or custom or usage to which he lays or puts his premises or property is very sensitive. If the stream of traffic on a road is no nuisance to a health gentleman, then it yearns not to warrant or entitles a bizarre (sick or a kind or ill) man to file a suit seeking an action even if he had suffered, or the damage is sensible and substantial. Broadly speaking, if the noise created by the traffic on the street ensure not to disrupt or annoys a common person or the public in general but disturbs solitary

[23] *Ushaben v Bhagyalaxmi Chitra Mandir* AIR 1978 Guj 13

the petitioner during sleep, work, trade, or business owing to with over sensitiveness then it will be considered as that it is not at all the nuisance in contradiction of the claimant. And a human cannot generally enhance obligations and so as the liability of his neighbour by bringing or running an extremely delicate trade.

Case Law: In "Robinson v. Kilvert"[24], the plaintiff owns a flat in the building and he was using that as a warehouse for storing the things, and for the instance, he brought up brown paper to store the same in that warehouse. The defendant owns a floor below the plaintiff and because of the heat created by him, the plaintiff's brown papers were dried and thus losing their original value it. Court conducted that the respondent was not accountable or answerable for any kind of nuisance against the plaintiff as the loss incurred by the petitioner was because they were practicing the exceptionally delicate trade-in that building and the paper were not damaged generally because of the plaintiff's work or act. A Judge noticed that "A man who carries, on the exceptionally delicate trade cannot complain because it is injured by his neighbour doing something lawful on his own properly if it were something which would not injure anything but an exceptionally delicate trade."

(b) Interference with the use or enjoyment of Land

Interference might trigger either:

(1) Damages to the estate itself,

Hurting the property ordinarily means that an unauthorized and unreasonable interference with the prosperities of the property or in the use of the property as per the wish of the owner by any other person through the object (be it be tangible or intangible) which causes damages or any kind of discomfort (mostly physical) to the enjoyment of the property is a concern, is actionable as per the nuisance. It can be allowing the tree's branches to hang over or cover the property of the neighbour or the escape of the leaves, fruit, or branches of that tree, noise, dust, electricity, fumes, filth, smoke, gas, fumes, animals, water, etc.

[24] *Robinson v Kilvert* (1889) 41 Ch D 88

Case law: In "*St. Helen's Smelting Co. v. Tipping*"[25], the trees & shrubs planted by the plaintiff was getting damaged due to the fumes which were released by the company's work of the defendant. And damages caused were considered the injury to the premise or the property or land of the claimant. And thus, the court, in this case, maintained that the respondent is accountable for nuisance caused to the plaintiff and plea by the defendant that the work is providing the employment to the local of that locality is unsuccessful.

(2) Injury or discomfort to the health of neighbour/ owner of the adjacent property.

Significant and inconsiderable interference with the luxury or even the basic comfort and convenience or expediency in using his/her property is illegal and equivalent as to the nuisance and thus is actionable as per the nuisance. A sheer (mere) fanciful or trilling troublesome or the inconvenience is not adequate. Here is the Latin maxim for the same, "De minimis non curat lex", which implies that the laws and regulations (courts) do not take interpretation and give justification of very tiny or insignificant matters. Mandatorily there should be "a serious inconvenience and interference with the comfort of the occupiers of the dwelling house according to notions prevalent among reasonable English men and women...."[26]. There is no proper and perfect definition of the standard of comfort, it generally varies with the time and place. As inconvenience and discomfort caused may also vary from the person to every next person and test for the inconvenience or discomfort is not taken from an individual's POV but is taking from the average of the ideology of the public residing in the same area and how they take that act as to be and also the plaintiff may be oversensitive in some cases.

Create troublesome by the disturbance of the neighbors during the full night because of the noise created by the horses which were coming from the building which is converted into a stable for the residence of horses is a nuisance. Likewise, A large crowd of the public is attracted outside the club, which is open till 4 in the morning and, collection of the extremely disorderly and noisy individual's exterior to the edifice in which some of the entertaining performance like the fireworks and a large and loud music system is arranged just for the sake of earning the profit

[25] *St Helen's Smelting* (n 11)
[26] *Bland v Yates* (1914) 58 Sal 612

by the owner is also the nuisance. Noise, dust, electricity, fumes, trees, filth, smoke, gas, fumes, animals, water, etc. may also be constituted as the nuisance even though if it is not injurious to the health of an individual. Reasonable meddling or interferences incidental to the lawful smooth running of the business or the "trade is not actionable" wrong and So "a man may, without being liable to an action, exercise a lawful trade as that of butcher's brewer, or the like notwithstanding that it be carried on so near the house of another as to be an annoyance to him in rendering his residence there less delectable or agreeable: provided that the trade be so conducted that it does not cause what amounts in point of law to nuisance to the neighboring house." Other than an intervention with the comfort or physical condition or any kind of intervention to the delightful pleasure of property as per the wish of the owner is done through an aggressive or offensive trade practice is an illegal and thus actionable nuisance.

(c) Damage

As we discussed above that the trespass and nuisance are two mutually exclusive torts and either of them may occur at a time. Also, as we discussed that trespass is "actionable per se" but in a briefcase of nuisance, the plaintiff needs to prove that there are damages caused to him in to order claim the remedy. While when we talk about the common nuisance, an individual or plaintiff can file a suit to bring up a lawsuit under the law of torts only when can prove that are some special damages caused to him. In the tort of the nuisance, despite all, the damage, harm, or infringement is one of the prerequisites requirements, the law established by the sovereign through the statutes will often presume it.

Case law:

In the case of "Fay v. Prentice"[27], a corner celling or a cornice of the respondent's house was inclining all around the garden of the plaintiff. Court of law held that the plain sheer fact which says that the cornice which is inclined or projected towards the garden of the plaintiff infers and raise a concern and presumption that the fall of the rainwater will occur during the rainy season

[27] *Fay v Prentice* (1854) 1 CB 828

mainly and can damage the plaintiff's garden and this need not to proven in the court of law, thus it was the nuisance.

DEFENSES

A few defenses can plead by the respondent to get rid of the allegations alleged by the claimant and with an encounter for the nuisance. Only a few defenses are recognized by the court of law as to be the valid ones while others were rejected. Now I would like to discuss both valid/effectual defenses and the invalid/ineffectual defenses.

(A) Effectual defenses

1. Prescriptive or the regulatory right to commit a nuisance

A right goes for taking or doing an act, which would else be a nuisance, may be procured through the means of the prescription or the regulatory right. An example of prescription is, like for supposing a person named 'A' had the possession of the properties by any means or of any individual or government for more than 20 years, legally has the full right to continue with possession thereafter too because of the prescriptive rights of a specific person. The right to do a private nuisance may generally be bought up as an easement if the same has been openly and peacefully enjoyed by a person or the party as to the rights and easement, without any kind of interruption, and for the period of 20 years or more[28]. Just after the completion of the time of the 20 years of the possession, the tort of a nuisance now becomes legitimate ab initio as if it has remained permitted by permission through the permit provided by the possessor of servient land from the very starting. And also, the time period i.e., 20 years cannot be commenced to run or take the possession as no suit was bring up to claim the ownership neither to claim the possession through stating that to be as a nuisance.

Case Law:

In "Sturges v. Bridgman"[29], a candymaker- the defendant in this case (X hereafter), had a bakery kitchenette in the backside of his residence. For more than the period of 20 years, confectionery ingredients were smashed (grinded) in his kitchen with the help of large

[28] Indian Easement Act, s 15; Limitation Act 1963, s 25

[29] *Sturges v Bridgman* (n 21)

pestles and mortars (manual grinder), the plaintiff, a physician living in the adjacent house, never felt the vibration and the noise produced by running the manufacturing unit, to be as a nuisance during that period. The physician then decided to construct a consulting room in the garden of the backyard of his home and then for the first time at that instant he felt that the vibration and noise caused in the confectioner's kitchen due to running the manufacturing unit i.e., pestles and mortars have been to be as a nuisance, and they substantially interfered the plaintiff with continuing this practice.

It was held that the claim alleged by the plaintiff were proven to be true and thus the granted an injunction in contradiction of the defendant (confectioner), and the defendants claim of the prescriptive right to use pestles and mortars at the manufacturing site was failed because firstly, the interference had not been an actionable nuisance for the prior history of 20 years. Secondly, the act of Nuisance began only when the physician has decided and completely settled the consultancy room in the backside garden of his house.

2. Statutory or legislative Authority

An act that is brought up under or by the authority of a statute is a defense and is legal by the court of law. If the nuisance is essentially a result of something which has been authorised by law or of any piece of legislation, then there is no liability for the same act committed under the law of torts.

Thus because of the same the railway company has full authority and rights to run the railway trains on the tracks laid down, and they will not be liable, irrespective of the outstanding attention or care if the train's engine catches the fire because of sparking and resultantly it causes any kind of damages to the next-door land or premises or if it depreciates the worth of the adjoining land because of the nuisance caused by the means of vibration, smoke, or noise produced by running the train.

According to Lord Halsbury[30]: "It cannot now be doubted that a railway company constituted to carry passengers, or goods, or cattle, are protected in the use of the functions

[30] *London Brighton and South Coast Rail Co v Turman* (1885) 11 AC 45 at 50

with which Parliament has entrusted them if the use they make of those functions necessarily involves the creation of what would otherwise be a nuisance at Common Law".

(B) Ineffectual Defenses

1. Nuisance caused due to the act of other or others

Many times, if 2 or further persons who are acting autonomously from each other, certainly might cause the tort of nuisance, although the activity constituted as the nuisance to another person is not the work of anyone alone, but an action can be brought against anyone of them, irrespective of the activity caused is not the result or product of anyone alone. Thus, it is no defence for the defendant to say that the act constituted is not his alone and the nuisance is caused only when the other party or parties started acting in the same way[31].

Example: Like if 50 peoples left their wheelbarrows at a place and it is causing a nuisance to someone, then through a single person's act haven't caused the nuisance, but an act can be initiated in contradiction of those 50 individuals and no one among them can claim and yield the defense that the act caused was not alone the end result of the nuisance caused and he alone hasn't caused any kind of damage to the complainant or the plaintiff.

2. Public Good

One can't allege the defense as by saying that a committed by him is advantageous to the community in general and causing the nuisance for a particular individual or plaintiff is fair, and it is no defense under the tort of nuisance and thus, no one can claim such things to use it as a defense, else no public efficiency mission or commission possibly will be held accountable for the illegitimate and illegal infringement of the individuals' rights through the means of interfering.

Case Law:

[31] *Thorpe v Burmfit* (1873) LR 8 Ch 650

In "Sheffer v. City of London Electric Lighting Co"[32]., the defendant was supposed to build an electric powerhouse that benefits the public at large but during the commencement reimbursement of the act during the construction time period there was a huge violent vibration inside and outside the plaintiffs' premises and which resultantly broke or damaged the plaintiff's home. In response to the plaintiff's suit for the injunction, the defended plead to use the defense of the 'public good' and the construction of the building was the need of the hour and failing to construct which the whole city of London would suffer, as they will lose the coming benefits of the light for the full city through the proposed model of the powerhouse. The appeal was rebuffed, and the court of law announced order of injunction to the plaintiff against the respondents.

3. **Reasonable Care**: pertaining to the judicious maintenance or the care to avoid the nuisance incurred is not at all defense in general, as pertaining to the reasonable care does not imply that the damages suffered by the plaintiff mean nothing and thus plaintiff must be provided with the reasonable compensation or the injunction.

Case Law:

In Rapier v. London Tramways Co.[33], In this case, the defendant had constructed the stalls and shads to have a capacity for two hundred horses for inducement or picking up their trams and because of same a significant and considerable disgusting odour which was considered to the nuisance stood triggered by the respondent and he pleaded to take the defence as the possible care to the extreme was taken up by the defendant to stop and avert the nuisance. It remained apprehended that it is no ground to take or use as the defence and If an event or operation cannot, by adhering to the reasonable care and skills, be prevented the nuisance to cause, it generally through the lawful means be undertaken and is completely illegal and must be amounting to pay the compensation, except if the consent of those for whom the nuisance is caused or those injured by it or by any authority of legislation or law by the sovereign.

[32] *Sheffer v City of London Electric Lighting Co* (1895) 1 Ch 287
[33] *Rapier v London Tramways Co* (1893) 2 Ch 588

4. Plaintiff coming to nuisance:

No person can be denied of the right to the property i.e., an individual can be anticipated to abstain from purchasing the property or the land on which a nuisance already did exist, and that person has full rights to stand up against the nuisance which in general is happening before he joined or turned to that place. The Latin maxim "maxim volenti non fit injuria" can't remain to plead in all cases of such kind. And thus, it is no ground to argue or plea defense that the plaintiff voluntarily came at this place or came after meanwhile his/her business is running from the older time.

Case law: In "Bills v: Hall"[34], in a lawsuit against nuisance for "Diverse noisome, noxious and offensive vapour, fumes, smell and stenches" out of the tallow-chandlery (beef or mutton or the skin of the animal) of the defendant, It was not a valid ground the business of the defendant is running from the time before the plaintiff came to that place i.e., 3 years. And thus, it no defense, and the court issued an injunction against the defendant in this case.

REMEDIES FOR THE TORT OF NUISANCE

1. Injunction

A judicial order seeks to restrain a person or a group of persons (corporation) from executing or further performing an action that might be endangering or attacking or violating the legitimate legal rights of another person. It can be of either permanent or temporary injunction and if the court order a temporary injunction, then it means that it is awarded for a limited period and which can be either confirmed or reversed after a period. If confirmed, then it can be called the permanent one.

2. Damages

The nominal damages (on the part of both the parties) might be submitted in conditions of reimbursement to the victimized party. The amount of the damages which must be given to the

[34] *Bills v Hall* (1838) 4 Bing NC 183

aggrieved party by the tortfeasor is decided as per statute and the damages are not only awarded with the purpose to compensate the individual who had to suffer certain damages but also to make the tortfeasor realize his/her mistake and deter him/her from continuing or repeating the wrong act again in future.

3. Abatement

Abatement is a negotiation outside the court and this type of remedy is generally not favoured by the law and isn't backed by a statute but is available under several specific circumstances. Abatement of the nuisance generally means that the party suffered is themselves providing a kind of NOC (no objection) and thus removing the nuisance without going for any kind of legal proceedings.

Example: John (J hereafter) and Sam (S hereafter) are neighbours; S has planted a poisonous or noxious tree, which after a period grows up in every direction and eventually reaches the land of J. Now as the branches of the tree are reaching to the land of J, thus J has every right now to cut that branch or branches of the tree, as it is acting as an obstacle and affecting J's right to enjoy his property, but he can only cut the tree with the prior notice to S. But if J despite giving notice, goes to the land of S, without his due permission and chops off the entire tree or the branches of the tree, which then falls on the land of J and S as well, then this act done by J is wrong and the action took here is beyond the reasonableness.

CONCLUSION

The researcher for this research study aimed to critically analyze the nuisance and its type and to study how the concept of the nuisance evolve under the English legal system and the general difference between the public (common) nuisance and a private nuisance or the tort of the nuisance, to find out the answers of the question raised while preparing this project and to fulfill the primary objective of this research which were, to study about the nuisance, elements required to prove a nuisance, defense available for the defendant against the suit of the plaintiff and the remedies available for the claimant and last the basic to brief difference between the

public (common) nuisance and a private nuisance or the tort of the nuisance and supporting the facts or arguments in both with the available precedents or the case laws. They are two essential elements that are required to prove a nuisance, firstly, there must be a wrongful act and secondly, it must violate some or other general rights of an individual.

After reading the various articles, books, and case laws I came to the conclusions, which are as follows: firstly, Nuisance is an act or omission which resulted in hereditaments or tenements of another, or annoyance of the lands or to the hurt the person's right on his premises, but which is not amounting to the trespass. Secondly, the nuisance historical breakthrough can be traced through the resign of the Henry III and with times in got developed and also the scope of the core objective of this keeps on changing and if we compare it from past, then there was no as such importance of the rights of an individual while the individual rights nowadays is of extreme importance and thus they must be respected and they safeguarded by the constitution of Indian for every citizen of India under its territory.

There are some differences between the common and private nuisance, like the private nuisance or the tort of nuisance means an infringement of the right of a private person whereas the infringement or intervention in the rights of the public at large is the public or common nuisance tort. Secondly, the injury is caused to an individual in the private nuisance while the common nuisance causes the injury to every person of the public. Thirdly, the injured person in case of the private nuisance can file a suit to bring an action while a person under public nuisance can only succeed in bringing up action if he sustains a special injury and he succeeds in proving the same. Lastly, under private nuisance, the claimant must prove that the interference with the enjoyment of the land while the public nuisance is "actionable per se".