

Nuisance

Introduction A person in possession of a property is entitled to its undisturbed enjoyment as per law. However, if someone else's improper use or enjoyment in his property ends up resulting into an unlawful interference with his enjoyment or use of that property or of some of the rights over it, or in connection with it, we can say that the tort of nuisance has occurred.

The word "nuisance" has been derived from the Old French word "nuire" which means "to cause harm, or to hurt, or to annoy". The Latin word for nuisance is "nocere" which means "to cause harm". Nuisance is an injury to the right of a person's possession of his property to undisturbed enjoyment of it and results from improper usage by another individual.

परिचय

किसी संपत्ति के कब्जे में रहने वाला व्यक्ति कानून के अनुसार उसके निर्विघ्न आनंद का हकदार होता है। हालांकि, यदि किसी अन्य व्यक्ति के अनुचित उपयोग या आनंद के कारण किसी की संपत्ति या उस पर अधिकारों के उपयोग या आनंद में अवैध हस्तक्षेप होता है, तो इसे उपद्रव (Nuisance) का कृत्य कहा जाएगा।

"न्यूसेंस" शब्द पुरानी फ्रेंच भाषा के "nuire" शब्द से लिया गया है, जिसका अर्थ है "हानि पहुंचाना, चोट पहुंचाना, या परेशान करना।" लैटिन में, इसे "nocere" कहा गया है, जिसका अर्थ है "हानि पहुंचाना।" न्यूसेंस उस अधिकार का उल्लंघन है जो किसी व्यक्ति की संपत्ति के निर्विघ्न आनंद से संबंधित होता है और यह किसी अन्य व्यक्ति के अनुचित उपयोग के कारण होता है।

Definitions by Various thinkers According to **Stephen**, nuisance is anything done to the hurt or annoyance of the tenements of another, or of the lands, one which doesn't amount to trespass. According to **Salmond**, nuisance consists in causing or allowing to cause without lawful justification, the escape of any deleterious thing from one's land or from anywhere into land in possession of the plaintiff, such as water, smoke, gas, heat, electricity, etc.

Essential elements of Nuisance

Wrongful act Any act which is done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful act.

Damage or loss or annoyance caused to another individual. Damage or loss or annoyance must be such which the law should consider as a substantial Damage or loss or annoyance must be such which the law should consider as a substantial material for the claim.

विभिन्न विचारकों द्वारा परिभाषाएं

- **स्टीफन:** न्यूसेंस वह है जो किसी अन्य के भवनों या भूमि को हानि या असुविधा पहुंचाने वाला हो, लेकिन जो अतिक्रमण नहीं है।
- **सैलमंड:** न्यूसेंस बिना वैध औचित्य के, किसी हानिकारक चीज़ को अपनी भूमि से या कहीं और से वादी की भूमि में जाने देने का कार्य है, जैसे पानी, धुआं, गैस, गर्मी, बिजली आदि।

न्यूसेंस के आवश्यक तत्व

1. गलत कार्य:
 - ऐसा कोई भी कार्य जो किसी अन्य के कानूनी अधिकारों का उल्लंघन करने के इरादे से किया गया हो, गलत कार्य माना जाएगा।
2. क्षति, हानि, या परेशानी:
 - क्षति, हानि, या परेशानी ऐसी होनी चाहिए जिसे कानून ने कार्रवाई योग्य माना हो।

Kinds of Nuisance न्यूसेंस के प्रकार

1. Public Nuisance The Indian Penal code defines nuisance as an act which causes any common injury, danger or annoyance, to the people in general who dwell or occupy the property, in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to the people who may have occasion to use any public right. Public nuisance affects the society and the people living in it at large, or some considerable portion of the society and it affects the rights which the members of the society might enjoy over the property. The acts which seriously affect or interfere with the **health, safety or comfort of the general public** is a public nuisance.

Instances where an individual may have a private right of action in respect to a public nuisance:

- He must show the existence of any personal injury which is of a higher degree than the rest of the public.
- Such an injury has to be direct and not just a consequential injury.
- The injury must be shown to have a huge effect.

1. सार्वजनिक न्यूसेंस

भारतीय दंड संहिता में न्यूसेंस को ऐसा कार्य परिभाषित किया गया है जो सामान्य चोट, खतरा या असुविधा उत्पन्न करता है। यह समाज या उसके महत्वपूर्ण हिस्से को प्रभावित करता है और सार्वजनिक अधिकारों जैसे स्वास्थ्य, सुरक्षा, या आराम में हस्तक्षेप करता है।

सार्वजनिक न्यूसेंस के लिए व्यक्तिगत कार्रवाई के उदाहरण:

- सार्वजनिक की तुलना में व्यक्तिगत चोट अधिक होनी चाहिए।
- चोट प्रत्यक्ष होनी चाहिए, न कि परोक्ष।
- चोट का प्रभाव महत्वपूर्ण होना चाहिए।

2. Private Nuisance is that kind of nuisance in which a person's use or enjoyment of his property is ruined by another. It may also injuriously affect the owner of the property by physically injuring his property or by affecting the enjoyment of the property. Unlike public nuisance, in private nuisance, an individual's usage or enjoyment of property is ruined as distinguished from the public or society at large. The remedy for private nuisance is a **civil action for damages** or an **injunction** or both.

Elements which constitute a private nuisance

- The interference must be unreasonable or unlawful. It is meant that the act should not be justifiable in the eyes of the law and should be by an act which no reasonable man would do.
- Such interference has to be with the use or enjoyment of land, or of some rights over the property, or it should be in connection with the property or physical discomfort.
- There should be seeable damage to the property or with the enjoyment of the property In order to constitute a private nuisance.

Case Law: Rose v. Miles(1815) 4M &S. 101 The defendant had wrongfully obstructed a public navigable creek which obstructed the defendant from transporting his goods through the creek

due to which he had to transport his goods through land because of which he suffered extra costs in the transportation. It was **held** that the act of the defendant had caused a public nuisance as the plaintiff successfully proved that he had incurred loss over other members of the society and he had a right of action against the defendant.

2. व्यक्तिगत न्यूसेंस

व्यक्तिगत न्यूसेंस वह है जब किसी की संपत्ति के उपयोग या आनंद को किसी अन्य के कार्यों से बाधित किया जाए। यह सार्वजनिक न्यूसेंस के विपरीत है और केवल व्यक्तिगत प्रभाव डालता है।

व्यक्तिगत न्यूसेंस के तत्व:

- हस्तक्षेप अवैध या अनुचित होना चाहिए।
- यह हस्तक्षेप भूमि के उपयोग या आनंद से संबंधित होना चाहिए।
- संपत्ति या उसके आनंद में देखी जा सकने वाली क्षति होनी चाहिए।

मामला: *Rose v. Miles* (1815) 4M & S. 101 उत्तरदाता ने एक सार्वजनिक जलमार्ग को अवरुद्ध कर दिया, जिससे वादी को भूमि मार्ग से सामान परिवहन करना पड़ा। न्यायालय ने इसे सार्वजनिक न्यूसेंस माना और वादी को क्षतिपूर्ति दी।

A nuisance may be in respect of either property or physical discomfort

1. **Property** In the case of a nuisance with respect to the property, any sensible injury to the property will be enough to support an action for the damages.

2. **Physical discomfort** In a suit of nuisance arising out of physical discomfort, there are two essential conditions required.

- In excess of the natural and ordinary course of enjoyment of the property. The usage by the third party should be out of the natural course of enjoyment from one party.
- Interfering with the ordinary conduct of human existence.

The discomfort should be of such a degree that it would affect an individual in the locality and people would not be able to put up or tolerate the discomfort.

Case Law: Radhey Shyam v. Gur Prasad AIR 1978 All 86 Mr Gur Prasad Saxena and another filed a suit against Mr Radhey Shyam and five other individuals for permanent

injunction restraining the defendant from installing and running a flour mill in the premises occupied by the defendant. Gur Prasad Saxena filed another suit against Radhey Shyam and five other individuals for a permanent injunction from running and continuing to run an oil expeller plant. The plaintiff has alleged that the **mill was causing a lot of noise** which in turn was affecting the health of the plaintiff. It was held that by running a flour mill in a residential area, the defendant was causing a nuisance to the plaintiff and affecting his health severely.

न्यूसेंस: संपत्ति बनाम शारीरिक असुविधा

1. संपत्ति:

- संपत्ति को हुई कोई भी मानी जाने योग्य क्षति दावा करने के लिए पर्याप्त है।

2. शारीरिक असुविधा:

- हस्तक्षेप संपत्ति के प्राकृतिक या सामान्य आनंद से अधिक होना चाहिए।
- असुविधा इतनी होनी चाहिए कि स्थान के लोग उसे सहन न कर सकें।

मामला: Radhey Shyam v. Gur Prasad AIR 1978 All 86 आवासीय क्षेत्र में आटा मिल चलाने से शोर उत्पन्न हुआ, जिससे वादी के स्वास्थ्य पर बुरा प्रभाव पड़ा। न्यायालय ने इसे न्यूसेंस माना।

REMEDIES

1. Prescription

• A prescription is a title acquired by use and time and which is allowed by the law, a person claims any property because his ancestors have had the possession of the property by law.

• Prescription is a special kind of defence, as, if a nuisance has been peacefully and openly going on without any kind of interruption then the defence of prescription is available to the party. On the expiration of this term of twenty years, the nuisance becomes legalised as if it had been authorised in its commencement by a grant from the owner of the land.

• The **essence of prescription** is explained in Section 26 of the limitations act and Section 15 of the Easements Act.

A. Use or enjoyment of the property: The use or enjoyment of the property must be acquired by the individual by law and the use or enjoyment must be done openly and peacefully.

B. Identity of the thing/property enjoyed: The Individual should be aware of the Identity of the thing or property which he or she is peacefully or publically enjoying.

C. It should be unfavourable to the rights of another individual: The use or enjoyment of the thing or property should be of such a nature that it should be affecting the rights of another Individual thus causing a nuisance and even after knowing of such a nuisance being caused there must've been no action taken against the person causing It for **at least twenty years**.

2. Statutory authority

- When a statute authorises the doing of a particular act or the use of land in a way, all the remedies whether by action or indictment or charge, are taken away. Provided that every necessary reasonable precaution has been taken.
- The statutory authority may be either absolute or conditional.
- When there is an absolute authority, the statute allows the act and it is not necessary that the act must cause a nuisance or any other form of injury.
- Whereas in the case where there is a conditional authority, the state allows the act to be done only if it can be done without any causation of nuisance or any other form of injury. What are the remedies for nuisance?

3. **injunction** is a judicial order restraining a person from doing or continuing an act which might be threatening or invading the legal rights of another. It may be in the form of a **temporary** injunction which is granted for a limited period of time which may get reversed or confirmed. If it is confirmed, then it takes the form of a **permanent** injunction.

The damages may be offered in terms of compensation to the aggrieved party, these could be **nominal** damages. The damages to be paid to the aggrieved party is decided by the statute and the purpose of the damages is not just compensating the individual who has suffered but also making the defendant realise his mistakes and **deter** him from repeating the same wrong done by him.

8. **Abatement** of nuisance means the **removal** of a nuisance by the party who has suffered, without any legal proceedings. This kind of remedy is not favoured by the law. But is available under certain circumstances. This privilege must be exercised within a reasonable time and usually requires notice to the defendant and his failure to act. Reasonable for may be used to

employ the abatement, and the plaintiff will be liable if his actions go beyond reasonable measures.

Example: Ace and Beck are neighbours, Beck has a poisonous tree on his land which overtime outgrows and reaches the land of Ace. Now Ace has every right to cut that part of the tree which will affect his enjoyment of his land with prior notice to Beck. But if Ace goes to Beck, land without his permission, and chops off the entire tree which then falls on the land of Beck, then Ace shall be in the wrong here as his action taken would be beyond reasonableness.

न्यूसेंस के उपचार

1. प्रिस्क्रिप्शन

- बीस वर्षों तक लगातार और शांतिपूर्ण उपयोग के माध्यम से प्राप्त अधिकार।
- इसे लिमिटेशन एक्ट की धारा 26 और ईजमेंट्स एक्ट की धारा 15 में परिभाषित किया गया है।

2. वैधानिक अधिकार

- जब किसी कार्य को करने का वैधानिक प्राधिकरण हो, तो न्यूसेंस के लिए कोई उपचार उपलब्ध नहीं होता।
- पूर्ण अधिकार: चाहे न्यूसेंस हो, कार्य की अनुमति होती है।
- सशर्त अधिकार: कार्य तभी किया जा सकता है जब यह न्यूसेंस उत्पन्न न करे।

1. निषेधाज्ञा:

- ऐसा न्यायिक आदेश जो किसी व्यक्ति को न्यूसेंस उत्पन्न करने वाले कार्य को रोकने का निर्देश देता है।

2. क्षतिपूर्ति:

- प्रभावित पक्ष को मुआवजा। इसका उद्देश्य हानि की भरपाई और गलत कार्यकर्ता को सबक सिखाना होता है।

3. उपद्रव का निराकरण:

- प्रभावित पक्ष द्वारा बिना कानूनी कार्यवाही के न्यूसेंस को हटाना। यह केवल उचित उपायों और पूर्व सूचना के तहत किया जा सकता है।

उदाहरण: यदि किसी पड़ोसी का पेड़ आपकी संपत्ति में बढ़ रहा है, तो आप इसे काट सकते हैं, लेकिन बिना अनुमति के पूरा पेड़ नहीं हटा सकते।

Nuisance and Trespass - Distinguished

1. Trespass, on one hand, is the direct **physical interference** with the plaintiff's possession of the property through some material or tangible object whereas, in the case of a nuisance, it is an **injury to some right of the possession** of the property but **not the possession itself**.

2. Trespass is **actionable per se** (actions which do not require allegations or proof), whereas, in the case of a nuisance, only the proof of **actual damage** to the property is required.

Example: Simply entering on another individual's property without the owner's consent and without causing him any injury would be trespass whereas if there is an injury to the property of another or any interference with his enjoyment of the property, then it will amount to a nuisance.

3. If the interference with the use of the property is **direct**, then the wrong is trespass. Whereas if the interference with the use or enjoyment of the property is **consequential** then it will amount to a nuisance.

Example: Planting a tree on someone else's land would amount to trespass whereas if a person plants a tree on their own land which then outgrows the land of another would amount to a nuisance.

Case Law: Ushaben Navinchandra Trivedi v. Bhagyalaxmi Chitra Mandal AIR 1978 Guj 13, (1977) GLR 424. In this case, the plaintiff had sued the defendant for a **permanent injunction** to restrain the defendant from showing a movie named "Jai Santoshi Maa". It was said by the plaintiff that the contents of the movie significantly hurt the religious sentiments of the people belonging to the Hindu community as well as the religious sentiments of the plaintiff as the movie showed Hindu Goddess' Laxmi, Parvati, and Saraswati, to be jealous of one another and were ridiculed in the film. It was held that **hurt to religious sentiments was not an actionable wrong**. The concept of nuisance arises **commonly in everyone's daily life**, in fact, the Indian courts have borrowed quite a lot from the English principles as well as from the

decisions of the common law along with creating their own precedents. This has helped the concept of nuisance in the field of law develop quite extensively and assures the fairness and well being of all the parties which may be involved such as in the case of Private nuisance, the party which is being affected, as well as, in the case of public nuisance, where the society at large is being affected.

न्यूसेंस बनाम अतिक्रमण

1. हस्तक्षेप का स्वरूप:
 - अतिक्रमण में संपत्ति में सीधा भौतिक हस्तक्षेप होता है।
 - न्यूसेंस में संपत्ति के अधिकार का उल्लंघन होता है।
2. स्वतः क्रियाशील:
 - अतिक्रमण में क्षति का सबूत आवश्यक नहीं।
 - न्यूसेंस में वास्तविक क्षति का सबूत आवश्यक है।
3. सीधा बनाम परोक्ष:
 - अतिक्रमण में सीधा हस्तक्षेप होता है।
 - न्यूसेंस में परोक्ष हस्तक्षेप होता है।

मामला: Ushaben Navinchandra Trivedi v. Bhagyalaxmi Chitra Mandal AIR 1978 Guj 13 वादी ने धार्मिक भावनाओं को ठेस पहुंचाने वाले फिल्म के प्रदर्शन को रोकने के लिए मामला दायर किया। न्यायालय ने कहा कि धार्मिक भावनाओं को ठेस पहुंचाना कार्रवाई योग्य गलत नहीं है।

न्यूसेंस की अवधारणा समाज में सामंजस्य बनाए रखने में महत्वपूर्ण भूमिका निभाती है। भारतीय न्यायालयों ने इस क्षेत्र को अंग्रेजी सिद्धांतों और उदाहरणों से प्रेरणा लेकर विकसित किया है, जिससे सार्वजनिक और व्यक्तिगत न्यूसेंस के मामलों में निष्पक्षता सुनिश्चित होती है।