

Public nuisance & provisions regarding obscenity

**Question: 1 What is a public nuisance ?
Distinguish it from private nuisance.
Punishment of nuisance.**

Ans. Public nuisance.-A person is guilty of public nuisance, who does any act or is guilty of any illegal omission, which causes any common injury, danger or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage. (Section 268).

Essential Ingredients

Following are the ingredients of the offence of public nuisance-

(i) any act, or

(ii) any omission which is illegal,

(iii) resulting in any-

(a) common injury, or

(b) common danger, or

(c) annoyance.

(iv) to the public in general or to the people in general who dwell or occupy property in the vicinity; or

(v) which must necessarily cause-(a) injury, (b) obstruction, (c) danger or annoyance to persons who may have occasion to use any public right, is called public nuisance.

Difference between Public and Private

Nuisance A public nuisance affects people in general while a private nuisance affects an individual or particular individuals only. A public nuisance gives rise to both civil and criminal causes of action while a private one to civil action only.

(i) Public nuisance is an offence against the public in general against a considerable portion thereof whereas the private nuisance is an offence against the rights of a person.

(ii) Public nuisance is an offence mentioned under Section 268 of Indian Penal Code therefore, an action cannot be instituted by private individual in his own name, except where he can prove some special damage to himself.

Wintesbottom v. Lord Derby (1867) L.R. 2 Exch. 316, the private nuisance is a civil

wrong and an action can be maintained by the sufferer in his own name.

(iii) Public nuisance cannot become legal merely because of longstanding prevalence. The private nuisance may become legal by longstanding prevalence through prescription.

(iv) Private nuisance is redressible by an action for unliquidated damage (tort) but a public nuisance can only be stopped through declaration and injunction, issued by a competent Court of law.

(v) Private nuisance can be abated (repelled) by the person affected but the public nuisance cannot be abated by the person so injured. A person having a furious mastiff and letting it to go on the road unmuzzled, causes terror in the public due to its ferocity and therefore he is guilty of nuisance.

In *Avadh Kishore Sinha V. State*, 1980 Bihar LJR 50, where the accused parked his car in front of the house of a person every night and it remained there till late at night. It was held that though this act might bring bad name to that family and put it to shame it could not be held public nuisance because it caused no annoyance to public in general.

In *S. Venkataramaiah v. State*, 1989 Cr LJ 789 (Kar), it was held that for an act to be nuisance, it is not necessary that it must cause annoyance to every person within its range, it is enough if some of them are injuriously affected. Slaughtering a cattle in the public street the groans of which were heard and the blood was seen by the passengers was held to be a public nuisance.

Remedies of public nuisance: Remedies available are civil as well as criminal. Under

civil it may be the ground of a civil action for damages or an injunction or both.

Under section 91 CPC also, where plaintiff need not prove special damage. Criminal remedies are provided under chapter X of CrPC.

Punishment of nuisance

Section 290 IPC: Punishment for public nuisance in cases not otherwise provided for.—

Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

CLASSIFICATION OF OFFENCE

Punishment—Fine of 200 rupees—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Section 291 IPC: Continuance of nuisance after injunction to discontinue.—

Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

This section punishes a person repeating or continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 of CrPC empowers the Magistrate to forbid an act causing public nuisance.

CLASSIFICATION OF OFFENCE

Punishment—Simple imprisonment for 6 months, or fine, or both—

Cognizable-Bailable—Triable by any Magistrate—Non-compoundable.

,Question 2: What do you understand by obscene books ? Is the sale or exhibition of obscene books is prohibited and is an offence, and if so, under what circumstance ? What is the test laid down by the Supreme Court for judging the obscenity of the matter which is alleged to be obscene?

Ans. Provisions regarding obscenity-Section 292 (1) of I.P.C. defines obscene objects thus : "any book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (when it comprises two or more distinct items) the effect of any one of its items, is if taken as whole, such as to tend to deprave and

corrupt persons who are likely, having regard to all relevant circumstances, to reach, see or hear the matter contained or embodied in it.

Sec. 292 (2) provides:

"Whoever,--

(a) Sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation, or for purposes of sale, hire, distribution. public exhibition or circulation, makes, produces, or has in his possession an obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reasons to believe that such object will be sold, let to

hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that such obscene objects are, for any of the purposes aforesaid, made, produced, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may

extend to on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Explanation.-This section does not extend to- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure,- the publication of which is proved to be justified as being for the (1) public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purpose;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958, or-

(ii) any temple or on any car used for any conveyance of idols, or kept or used for any religious purpose.

Section 293 bans sale, etc. of obscene objects to young persons by prescribing punishment for such acts and runs thus :
Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with

imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

Section 294 states that whoever, to the annoyance of others : (a) does any obscene act in any public place, or (9) signs, recites or utters any obscene songs, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.

Test of obscenity.-In the famous case *R. v. Hicklin, (1868) LR 3 QB 360*, test of obscenity has been laid down by C.J. Cockburn which has been widely accepted as the correct exposition of law. According

to him, the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt and those whose minds are open to such immoral influence into whose hands a publication of this sort may fall. It is quite certain sex, or even to persons of more advanced years, thoughts of a most impure and lascivious character. it would suggest to the minds of the young of either

In *Ranjit Dudeschi v. State*, AIR 1965 SC 881, the Supreme Court accepted this test, where the book named "Lady Chatterley's Lover" was banned for sale. The Supreme Court held that treatment of sex in such a way as to appeal to the carnal side or as to have a tendency towards that is obscene, and it must be seen as to whether such a matter is likely to deprave and corrupt those minds who are open to such influences and into whose hands such material is likely to fall.

In *S. Khushboo v. Karniammal and another*, (2010) 3 Cri LJ 2228 SC. the Supreme Court held that the accused has merely referred to the increasing incidences of premarital sex and called for its societal acceptance. The statement published as part of the survey cannot be said to be in the nature of obscene communications.

In *P. Kulliah Swamy v. Sub-Inspector of Police Janumala Madugu*, 2003 Cri LJ 2488 (SC), the theatre of the petitioner in the name and style of M/s Sairam Picture Palace was seized and sealed for screening of obscene film although they had licence for running the theatre. The proprietor of the theatre and some other were arrested also. Trial was held for offence under Section 294 of IPC.