

occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual is the decisive factor.^{1.}

Nuisance is of two kinds: (1) public and (2) private.

(1) Public nuisance or common nuisance is an offence against the public either by doing a thing, which tends to the annoyance of the whole community in general, or by neglecting to do anything that the common good requires. It is an act affecting the public at large, or some considerable portion of them and it must interfere with rights, which members of the community might otherwise enjoy.

It is not a *sine qua non* that the annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity.^{2.}

As to when an individual can bring a civil action in respect of a public nuisance, see the authors' *Law of Torts*, 19th Edn, chapter XXI.

(2) Private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that private nuisance differs from public. It cannot be the subject of an indictment, but may be the ground of a civil action for damages or an injunction or both.^{3.}

[s 268.1] Liability of owner.—

Where the use of premises gives rise to a public nuisance it is generally the occupier for the time being who is liable for it, and not the absent proprietor.^{4.}

[s 268.2] Civil Remedy.—

'Private nuisance' affects some individuals as distinguished from the public at large. The remedies are of two kinds—civil and criminal. The remedies under the civil law are of two kinds. One is under [section 91 of the Code of Civil Procedure, 1908](#). Under it, a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him.^{5.}

[s 268.3] Criminal remedy.—

There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of [IPC, 1860](#). The second provides for summary proceedings under sections 133–144 of the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) and the third relates to remedies under special or local laws. Sub-sections (2) of [section 133 of Cr PC, 1973](#) postulates that no order duly made by a Magistrate under this section shall be called in question in any civil court. The provisions of Chapter X of the [Cr PC, 1973](#) should be so worked as not to become themselves, a nuisance to the community at large. A lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community.^{6.}

[s 268.4] Noise.—

Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered with reference to its degree and the surrounding circumstances, the place and the time.⁷.

1. *Vasant Manga Nikumba v Baburao Bhikanna Naidu*, (1995) Supp4 SCC 54 : (1996) 1 SCC (Cr) 27.

2. *Ibid*.

3. *vide THE LAW OF TORTS*, 19th Edn chapter XXI, by the author of this book.

4. *Bibhuti Bhusan v Bhuban Ram*, (1918) 46 Cal 515 .

5. *Kachrual Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .

6. *Kachrual Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .

7. *Noise Pollution (V), Re v.* (2005) 5 SCC 733 : JT 2005 (6) SC 210 : AIR 2005 SC 3136 .

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 269] Negligent act likely to spread infection of disease dangerous to life.

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—

This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases. Welfare of the society is the primary duty of every civilised State. [Section 269, IPC, 1860](#) makes the negligent act likely to spread infection or disease dangerous to life as an offence. The essential ingredients are:

- (1) that the accused does any act unlawfully or negligently; that such act is likely to spread infection of any disease dangerous to life; and
- (2) that he knows or had reasons to believe that the act is likely to cause such infection.

Thus causing infection of the disease, which is dangerous to life, is covered by this section.⁸ The expression "reason to believe" has been defined under [section 26 IPC, 1860](#) and it lays down that a person said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. A person can be supposed to know where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe".⁹

8. *Dr. Meeru Bhatia Prasad v State*, [2001 Cr LJ 1674](#) (Del).

9. *Dr. Prabha Malhotra v State*, [1999 Cr LJ 549](#) (All).

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 270] Malignant act likely to spread infection of disease dangerous to life.

Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The offence under this section is an aggravated form of the offence punishable under the preceding section.

In this section, the use of the word 'maliciously' indicates that the person spreading infection should be actuated by malice.^{10.}

There is no provision in the [Prevention of Food Adulteration Act, 1954](#) which nullifies sections 270–273 of the [IPC, 1860](#) or which make them dormant and non-applicable.^{11.}

[s 270.1] Confrontation with Special Law.—

Even if [section 270 of IPC, 1860](#) is invoked for supply of substandard food articles the special procedure laid down under [Food Safety and Standards Act, 2006](#) for testing and declaring the product as substandard should have been followed.^{12.}

10. 2nd Rep section 226.

11. *Mahesh Ramchandra Jadhav v State of Maharashtra*, [1999 Cr LJ 2310](#) (Bom).

12. *Christy Fried Gram Industry v State of Karnataka*, [2016 Cr LJ 482](#) (Kant) : [2016 \(1\) KCCR 83](#) .

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 271] Disobedience to quarantine rule.

Whoever knowingly disobeys any rule made and promulgated ^{13.}[by the ^{14.}***] Government ^{15.}*** for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—

The motive for disobeying any rule is quite immaterial. The disobedience is punishable whether any injurious consequence flows from it or not.

13. Subs. by the A.O. 1937, for by the Government of India or by any Government.
14. The words Central or any Provincial omitted by the A.O. 1950.
15. The words or the Crown Representative omitted by the A.O. 1948.

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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 272] Adulteration of food or drink intended for sale.

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. The following amendments were made by Orissa Act No. 3 of 1999, s. 2.

In its application to the State of Orissa, in sections 272, 273, 274, 275 and 276, for the words "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following, namely:—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."—Orissa Act 3 of 1999, section 2.

2. The offence is cognizable, non-bailable and triable by Court of Session *vide* Orissa Act No. 3 of 1999, s. 2.

Uttar Pradesh.—1. The following amendments were made by U.P. Act No. 47 of 1975, s. 3(1) (w.e.f. 15-9-1975).

In its application to the State of Uttar Pradesh, in s. 272, for the words "shall be punished with imprisonment of either description, for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both"

substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

West Bengal.—1. The following amendments were made by W.B. Act No. 42 of 1973, s. 3(i), (w.e.f. 29-4-1973).

In its application to the State of West Bengal in s. 272, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following words—

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* W.B. Act No. 34 of 1974.

COMMENT.—

The mixing of noxious ingredients in food or drink or otherwise rendering it unwholesome by adulteration is punishable under this section. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e.g., mixing water with milk¹⁶. or ghee (clarified butter) with vegetable oil.¹⁷

'Adulteration' means mixing with any other substance whether wholly different or of the same kind but of inferior quality.

The expression 'noxious as food' means unwholesome as food or injurious to health and not repugnant to one's feelings.¹⁸ It is essential to show that an article of food or drink has been adulterated and that it was intended to sell such article or that it was known that it would be likely to be sold as food or drink.¹⁹

[s 272.1] Adulteration of liquor.—

In order to establish that the offence under [section 272, IPC, 1860](#) has been committed, the prosecution has to prove that the article involved was food or drink meant to be