Chapter 2

COMMON LAW PRINCIPLE

At common law, as reflected in the law of Torts, pollution control rules exist in areas such as nuisance, negligence and strict liability. The roots relating to environmental liability have considerably evolved from the law of Tort. An analysis of the common law action for causing air, water or noise pollution would enable us to understand the doctrinal roots of modern environmental law.

R.N.D.Hamiton as aptly states it: "the deepest doctrinal roots of modern environmental law are found in the common law principles of nuisance. It may be caused through escape of water, filthy liquids or substances, smokes, fumes, gas, noise, heat, vibrations, electricity, disease, bacteria, trees, etc".[1] Actions brought under tort law are among the oldest of legal remedies to abate pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability. The rules of tort law were introduced in India during British Rule.

2.1. Negligence

A common law action for negligence may be brought to prevent environmental pollution. An act of negligence may also constitute a nuisance if it unlawfully interferes with the endowment of another's right. The judgement in *Heaven* v. *Pender*[2], was reiterated in *Donoghue* v. *Stevenson*[3], where Lord Atkin propounded the principles, that one must take reasonable care to avoid acts or omissions which one can reasonably foresee, which would be likely to injure one's neighbours.

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[1] Prof.Satish Shastri, *Environmental Law & Public Participation*, 1986, p. 2.
[2] (1883) II QBD 503.
[3] [1932] A.C. 532.

2.1. (i). Meaning of Negligence

Negligence is the breach of duty caused by the omission to do something, which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable man would not do.[4]

According to Winfield, 'Negligence as a tort is a breach of a legal duty to take care which results in damage to the claimant'.[5] Thus, its ingredients are (1) a legal duty to take; (2) breach of that duty, i.e., a failure to come up to the standard required by law; (3) consequential damage, due to such breach of legal duty to take care.[6]

It is not for every careless act that a person may be held responsible in tort law, nor even for every careless act that causes damage. He will only be liable in negligence if he is under a legal duty to take care.[7] This traditional rule of law is applied as much to environmental litigation as to any other type of litigation. Environmentalist had to prove, not merely that a certain activity causes damage, but that the damage is one for which enterprised sued is liable in law.

In the celebrated case of *Donoghue* v. *Stevenson*[8], Lord Atkin said:

> "In English law there must be, and is, some general conception of relations giving rise a duty of care, of which the particular cases found in the books are instances. The liability for negligence, whether you style it such or treat is as in other systems as a species of 'culpa', is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral Code would censure cannot in a practical world be treated so as to give right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour and the lawyer's question, Who is my neighbour? Receives a restricted reply. *You must take reasonable care to avoid acts or omissions which you*

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[4] *Blyth* v. *Birmingham Waterworks Co*, (1856) 11 Ex, 784.
[5] Winfield & Jolowicz, *Tort*, 16th edn, p 103.
[6] Ibid.
[7] Supra note 5 at p. 104.
[8] Supra note 2.

> *can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be— persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question*[9].

A major achievement made in this case[10] was that the fallacy of privity of contract was done away with, by allowing the consumer to bring an action in tort against the manufacturer, with whom there was no privity of contract.

2.1. (ii). The Degree of care

The degree of care, which a man is required to use in a particular situation in order to avoid the imputation of negligence, varies with the obviousness of the risk.[11]. If the danger of doing injury to the person or property of another by the pursuance of a certain line of conduct is great, the individual who proposes to pursue that particular course is bound to use great care in order to avoid the foreseeable harm. On the other hand, if the danger is slight, only a slight amount of care is required. In the words of Lord Reid : "Reasonable men do in fact take into account the degree of risk and do not act upon a bare possibility as they would if the risk were more substantial".[12] The purpose to be achieved must also be taken into account and a balance struck between the risk involved and the consequence of not taking it.

The degree of care as observed by the Supreme Court in the context of hazardous industries: "We cannot possibly adopt a policy of not having any chemical or hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries even if hazardous have to be set up since they are essential for economic development and advancement of well

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[9] Supra note 5 at p. 109.
[10] *Donoghue* v. *Stevenson*
[11] In blackout conditions, a new duty is imposed on a person walking on the road, by reason of the difficulty which the driver of a vehicle has of seeing a person or thing not illuminated by a light, and in those circumstances, it is the duty of such a person to take all reasonable steps to minimize the difficulty of the drivers of the oncoming vehicles; *Franklin* v. *Bristol Tramways Co.*, (1941) 1 All ER 188 : (1941) 1 KB 255.
[12] *Bolton* v. *Stone*, (1951) AC 850 (HL) p. 865.

being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of damage to the community and maximizing safety requirements in such industries."[13] The rule that a man is held to the exercise of the degree of care, which an ordinary prudent man would exercise in the same situation, is subject to one or two exceptions. If a person is highly skilled about a particular business, and knows that to be dangerous, which another, not so skilled as he, does not know to be dangerous, the law will hold him guilty of negligence in failing to use such expert skill. If a man holds himself out as being specially competent to do things requiring professional skill, he will be held liable for negligence if he fails to exhibit the care and skill of one ordinarily an expert in that business. In the commercialized world degree of care would also be determined by reference to the price which is being charged; e.g., a five star hotel owes a very high degree of care for the safety of its guests.[14]

2.2. Strict Liability

Strict liability has its origin in the case of *Rylands* v. *Fletcher*[15], where the facts were that the defendants who had a mill near Ainsworth in Lancashire wanted to improve its water-supply. They constructed a reservoir by employing reputed engineers to do it. When the reservoir was filled, water flowed down the plaintiff's neighbouring coal mine causing damage. The engineers were independent contractors. There was some negligence on their part in not properly sealing disused mine shafts which they had come across during the construction of the reservoir and it was through those shafts that the water flooded the plaintiff's mine. The defendants were in no way negligent having employed competent engineers to do the job and as the engineers were independent contractors, the defendants could not be made vicariously liable

[13] *M.C.Mehta* v. *Union of India*, (1986) 2 SCC 176 (201). But by an order passed on 20th Dec. 1986 in the same case, the Supreme Court held that the liability of an enterprise engaged in a hazardous industry is absolute.
[14] *Klans Mittelbachert* v. *The East India Hotels Ltd.*, AIR 1997 Delhi 201
[15] (1868) LR 3 HL 330.

for their negligence. The Court of Exchequer dismissed the claim as showing no cause of action. But the Court of Exchequer Chamber allowed the appeal. The House of Lords approved the judgment of Blackburn, J., of that Court which laid down a new basis of liability. The basis of liability was laid down by Blackburn, J. in these words: "The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape."[16] Blackburn, J., further said: "The general rule as above stated seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali work is damnified without any fault of his own; and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to other so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences." In the House of Lords, Lord Cairns while approving the judgment of Blackburn, J., laid down that the rule applied when there was non-natural user of land.

In *State of Punjab* v. *Modern Cultivators*[17], where damage was caused by overflow of water from a breach in a canal the Supreme Court held that use of land for construction of a canal system is an ordinary use and not a non natural use. The case was decided in favour of the plaintiff on the finding of negligence. This case does not modify the rule of *Rylands* v *Fletcher*. It was so

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[16] *Fletcher* v. *Rylands*, (1866) LR 1 Ex 265, 279.
[17] AIR 1965 SC 17.

held in *Jay Laxmi Salt Works (P) Ltd.* v. *State of Gujarat*[18] which was a case of damage caused by overflow of water from a reclamation bundh constructed by the State of Gujarat for reclamation of vast area of land from saltish water of sea. This case too was decided not on the reasoning that this was non natural use of land but on the basis of violation of public duty and negligence which lay in defective planning and construction of the bundh. The rule of *Rylands* v. *Fletcher* was again referred to in *Indian Council for Enviro Legal Action* v. *Union of India*[19]but the case was decided on the Mehta principle of strict liability which was held to have laid down an appropriate principle suited to our country, apart from being of binding authority.

The above discussion of authorities lead to the conclusion that if the defendant makes 'non-natural use' of land in his occupation in the course of which there is escape of something which causes foreseeable damage to person or property outside the defendant's premises, the defendant is liable irrespective of any question of negligence on the basis of the rule of strict liability propounded in *Rylands* v. *Fletcher*.

The principle of *Rylands* v. *Fletcher* was held to apply where a company stored in close proximity nitrate of soda and dinitrophenol for the purpose of making munitions for Government, with the result that on a fire breaking out they exploded with terrific violence causing loss of life and serious damage to adjoining property.[20] Similarly where the defendants drove a very large number of piles into the soil, thereby setting up such heavy vibrations as to cause serious structural damage to an old house belonging to the plaintiffs, with the result that the greater part had to be taken down in compliance with a dangerous structure notice, it was held that the defendants were responsible as insurers for all damages caused by the escape of the vibrations, they had so created.

Under the principle of *Rylands* v. *Fletcher*, a person who brings dangerous substances upon premises and carries on a dangerous trade with

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[18] (1994) 4 SCC 1.
[19] AIR 1996 SC 1446.
[20] *Rainham Chemical WorksLtd.* V. *Belvedere Fish Guano Co.*, (1921) 2 AC 465.

them is liable if, though without negligence on his part, these substances cause injury to persons cause injury to persons or property in their neighbourhood. It is immaterial whether he is or is not aware of the danger at the time when he brings and uses them. Thus a tramway company was held liable for using wood-blocks coated with creosote which gave off fumes which injured plants and shrubs of the plaintiff whose premises were near the road.[21]

The dangerous thing which is liable to cause fire should have been brought by the defendant on his premises in the course of some non-natural user.[22] If a person uses a traction engine which emits sparks in spite of all precautions being taken to prevent their emission, he will be liable if another person's hayrick be set on fire by the sparks, upon the ground that such an engine is a dangerous machine.[23]

2.2.(i). Defences to the Rule

In *Rylands* v. *Fletcher* the following are the defence available to the Rule:

(i) Consent of the claimant

Where the claimant has expressly or impliedly consented to the presence of the source of danger and there has been no negligence on the part of the defendant, the defendant is not liable.

(ii) Common benefit

Where the source of the danger is maintained for the common benefit of the clamant and the defendant, the defendant is not liable for its escape.

(iii) Act of stranger

If the escape was caused by the unforeseeable act of a stranger, the rule does not apply.

(iv) Statutory authority

The rule in *Rylands* v. *Fletcher* may be excluded by statute.

(v) Act of God

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[21] *West* v. *Bristol Tramways Co.*, (1908) 2 KB 14.
[22] *Mason* v. *Levy Auto Parts*, (1967) 2 All ER 62.
[23] *Powell* v. *Fall*, (1880) 5 QBD 597.

Where the escape is caused directly by natural causes without human intervention.

(vi) Default of the claimant

If the damage is caused solely by the act or default of the claimant himself, he has no remedy.

2.2. (ii) Rule in *M.C.Mehta v. Union of India*

A more stringent rule of strict liability than the rule in *Rylands* v. *Fletcher* was laid down by the Supreme Court recently in the case of *M.C.Mehta* v. *Union of India*[24]. The case related to the harm caused by escape of Oleum gas from one of the units of Shriram Foods and Fertiliser Industries. The Court held that the rule of *Rylands* v. *Fletcher* which was evolved in the 19th century did not fully meet the needs of a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries were necessary to be carried on as part of the development programme and that it was necessary to lay down a new rule not yet recognized by English law, to adequately deal with the problems arising in a highly industrialized economy. The Court laid down the rule as follows: "Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate *vis-à-vis* the tortuous principle of strict liability under the rule in *Rylands* v. *Fletcher*". The Court earlier pointed out that this duty is "absolute and non-delegable" and the enterprise cannot escape liability by showing that it had taken all reasonable care and there was no negligence on its part. The bases of the new rule as indicated by the Supreme Court are two: (1) If an enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume

[24] (1987) 1 SCC 395 : AIR 1987 SC 965.

that such permission is conditional on the enterprise absorbing the cost of any accident (including indemnification of all those who suffer harm in the accident) arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads; and (2) The enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards.

The rule in *Rylands* v. *Fletcher* requires non-natural use of land by the defendant and escape from his land of the thing, which causes damage. The rule in *M.C.Mehta* v. *Union of India* is not dependant on these conditions. The necessary requirements for applicability of the new rule are that the defendant is engaged in a hazardous or inherently dangerous activity and that harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity. The rule in *Rylands* v. *Fletcher* will not cover cases of harm to persons within the premises for the rule requires escape of the thing which causes harm from the premises. The new rule makes no such distinction between persons within the premises where the enterprise is carried on and persons outside the premises for escape of the thing causing harm from the premises is not a necessary condition for the applicability of the rule. Further, the rule in *Rylands* v. *Fletcher* though strict in the sense that it is not dependent on any negligence on the part of the defendant and in this respect similar to the new rule, is not absolute as it is subject to many exceptions but the new rule in *Mehta* case is not only strict but absolute and is subject to no exception. Another important point of distinction between the two rules is in the matter of award of damages. Damages awardable where the rule in *Rylands* v. *Fletcher* applies will be ordinary or compensatory; but in cases where the rule applicable is that laid down in *M.C.Mehta*'s case the Court can allow exemplary damages and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it. But in *Charan Lal Sahu* v. *Union of India*,[25] doubts were expressed as to correctness of this view as to damages by Misra CJ., that the view taken in *Mehta* case was obiter and

[25] AIR 1990 SC 1480.

was a departure from the law applied in western countries. But doubts expressed by Misra C.J. have not been accepted in *Indian Council for Enviro Legal Action* v. *Union of India*[26] and it was held that the rule laid down in *Mehta* case was not obiter and was appropriate and suited to the conditions prevailing in our country. This was a case where hazardous chemical industries had released highly toxic sludge and toxic untreated waste water which had percolated deep into the soil rendering the soil unfit for cultivation and water unfit for irrigation, human or animal consumption resulting in untold misery to the villagers of surrounding areas.[27]

2.3. NUISANCE

In modern parlance, nuisance is that branch of the law of tort most closely concerned with "protection of environment". Ordinarily, a nuisance means anything that annoys, hurts or offends; but for an interference to be an actionable nuisance, the conduct of the defendant must be unreasonable. Further, a nuisance must not be momentary, but must continue for sometime. A single, short inconvenience is not actionable. A nuisance would include offensive smells, noise, air pollution and water pollution.

According to Winfield nuisance is incapable of exact definition, but for the purpose of the law of Torts it may be described as "unlawful interference with a person's use or enjoyment of land or of some right over or in connection with it".[28] Clerk and Lindsell in their book on Torts[29] have observed that nuisance is an act or omission which is an interference with disturbance of or annoyance to a person in the exercise or enjoyment of (a) a right belonging to him as a member of the public, when it is public nuisance, or (b) his ownership or occupation of land or of some easement, quasi-easement, or other right used or enjoyed in connection with land, when it is private nuisance." This should be noted that public nuisance is always a criminal offence, the same cannot be said

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[26] AIR 1996 SC 1446.
[27] Ratanlal & Dhirajlal, *The Law of Torts*, 24th edn., 2002, p. 483-484.
[28] Winfield on Tort, Sixth Edition, 1954, p.536.
[29] Eleveth Edition, (Chapter 17 page 560).

to be a private nuisance. It follows as a corollary from it that the acts constituting public nuisance are all of them unlawful acts; those, which constitute private nuisances, are not necessarily or usually unlawful. An action for private nuisance may seek injunctive relief as well as damages. In cases of a continuing cause of action, such as pollution of a stream by factory wastes or smoke emissions from a chimney, the proper course is to sue for an injunction. Repeated actions for damages may be brought to recover the loss sustained up to the date of the court's decree; but future losses, which are contingent on the continuance of the wrong, are not usually awarded. Damages offer poor relief since the plaintiff would be compelled to bring successive actions. Ordinarily, therefore, courts grant the plaintiff an injunction where a nuisance exists or is threatened, unless he or she is guilty of improper conduct or delay.

Private Nuisance and Public Nuisance

Private nuisance is using or authorizing the use of one's property or of anything under one's control so as to injuriously affect an owner or occupier of property by physically injuring his property or by materially interfering with his health, comfort or convenience. Thus sending deleterious substance like gas, smoke or filth on the property of another person is private nuisance. It consists in an unjustifiable interference with proprietary rights of an ancillary type e.g. to use and enjoy one's property peaceably. Public nuisance on the other hand consists in an act causing common injury, danger, annoyance or obstruction to the public in the exercise of common rights.[30]

In *Datta Mal Chiranji Lal* v. *L.L.Prasad*[31], the Court distinguished between public and private nuisance. It observed that a public nuisance is a civil wrong but a public nuisance is a criminal offence, an act not warranted by law or an omission to discharge legal duty which act or omission, according to Stephen's Digest of Criminal law "obstructs or causes inconvenience or damage to the public in exercise of rights common to all His Majesty's Subjects".

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[30] Dr. Vijay Chitnis, *Law of Torts*, p.71-72.
[31] AIR 1960 All 632.

A civil action could also lie for a public nuisance under the circumstances under which a criminal action can lie now under Section 268 of the Indian Penal Code which runs as: "A person guilty of a public nuisance who does any act or is guilty of an 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".

Similarly, Section 277 of Indian Penal Code penalizes fouling water of public spring or reservoir while Section 178 penalises making atmosphere noxious to health.

A private person, however, cannot sue for a public nuisance unless he could prove that he has suffered a particular or special damage over and above the damage caused to the general public and that the damage caused to him was "direct and substantial". The Attorney General in England and the Advocate General (or Collector in a district place) in India can take an action for public nuisance.

Nowadays, however this action is less frequently taken by the Advocate Generals or the Collectors since in many instances, the local bodies or other authorities may have adequate statutory powers to deal with such situations. The remedies of injunction, damages and abatement are available nuisance in Tort.

2.3.(i) Private Nuisance

A private nuisance usually is caused by a person doing on his own land something, which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his acts are not confined to his own land but extend to the land of his neighbour in one of the following three ways:

1. By causing an encroachment on his neighbour's land, when it closely resembles trespass.
2. Causing physical damage to his neighbour's land or buildings or works or vegetation upon it, or

3. Unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land. It is also a nuisance to interfere with some easement or quasi-easement used or enjoyed with his neighbour's land.[32]

It will be manifest that making unreasonable noises comes in the third category and to be actionable it must be such as to be a real interference with the comfort or convenience of living according to the standards of the reasonable person. The law of private nuisance, in this sense, is undoubtedly elastic and it was in this connection that Lord Halbury made the following observations in *Colls* v. *Home & Colonial Stores Ltd*,[33]

> A dweller in towns cannot expect to have as pure air as free from smoke, smell, and noise as if he lived in the country, and distant from other dwelling, and yet an excess of smoke, smell and noise may give an cause of action, but in each of such cases it becomes a question of degree, and the question is in each case whether it amounts to a nuisance which will give a right of action.[34]

In Sturges v. Bridgman[35] Thesiger, L.J., expressed his views thus:

> "....whether anything is a nuisance or not is a question to be determined, not merely by an abstract consideration of the thing itself but in reference to its circumstances; what would be a nuisance in Belgrave Square would not necessarily be so in Bormondsey; and where a locality is devoted to a particular trade or manufacture carried on by the traders of manufacturers in a particular and established manner not constituting a public nuisance," Judges and Jurists would be justified in finding, and may be trusted to find, that the trade on manufacture so carried on in that locality is not a private or actionable wrong.[36]

There are several cases of private nuisance where the courts have restrained the polluters from generating dust and polluting air. In *Ram Baj Singh* v. *Babulal*[37], the court recognized a private right of action arising from a public nuisance. In this case, the plaintiff-appellant a doctor complained that the defendant, a brick-powdering mill, caused special damage and substantial injury to him.

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[32] Supra note 29, at 561-563.
[33] (1904) AC 179.
[34] Id, at 185.
[35] (1879) 11 ChD 852.
[36] Id., at 865.
[37] AIR 1982 All 285.

Learned Counsel appearing for the plaintiff has argued that the two courts below have not correctly appreciated the meaning of the expressions 'substantial injury' and 'special damage', as used in law.

The grievance of the plaintiff-appellant was that the brick-grinding machine was generating dust, which polluted the atmosphere and entered the consulting chamber of the plaintiff-appellant and caused physical inconvenience to him and his patients who came to his chamber. It was further stated that the said machine had been set up by the defendant-respondent without any permission or licence from the Municipal Board.

Respondent contended that no dust emanated during the process of grinding bricks and there was no question of any pollution being caused in the atmosphere. He further stated that the bricks were moistened before being subjected to grinding process and no dust resulted therefrom. He further stated that his machine did not produce any noise and according to him, the erection and working of the machine did not cause any nuisance—whether public or private. The trial court came to the conclusion that the defendant-respondent had erected the brick-grinding machine in the year 1965 without obtaining any licence from the appropriate authority. It further held that the dust did emanate and pollute the atmosphere and that such dust was injurious to health. It also came to the conclusion that the dust produced by the machine entered the consulting chamber of the plaintiff-appellant depending on the direction of the wind. The trial court, however, dismissed the suit of the plaintiff-appellant on the finding that the dust resulting from the machine did not cause any substantial injury either to the plaintiff or to his patients.

The Court of appeal did not interfere. Appeal to High Court was preferred where the court opined no precise or universal formula has been devised to determine the distinction between a trivial consequence of an act or a consequence which can be termed to be of substantial magnitude. The test, which has always been found to be useful in distinguishing the two sets of cases, is the test of ascertaining the reaction of a reasonable person according to

the ordinary usage of mankind living in a particular society in respect of the thing complained of.

The two [lower] courts... have been largely influenced by the fact that the plaintiff-appellant did not examine any of his patients to prove that any actual damage was caused to them on account of the dust emanating from the machine of the defendant-respondent. From this omission on the part of the plaintiff, they have drawn an adverse inference against him and have come to the conclusion that the plaintiff-appellant has failed to establish that any special damage or any substantial injury was caused to him.

The expression 'special damage' is used in law to indicate a damage caused to a party in contra-distinction to damage caused to the public at large. The damage caused to the public at large on account of a nuisance is referred in law as a public nuisance.

The expression 'special damage' was found by the textbook writers to be somewhat inaccurate and confusing. It actually follows from the findings recorded by the two courts below that the plaintiff had succeeded in establishing damage, which was particular to himself. It has been held by the court of appeal that the dust emanated from the crushing of bricks was a public hazard and was bound to cause injury to the health of the persons. It has further held that dust from bricks entered in sufficient quantity into the consulting chamber of the plaintiff-appellant so that a thin red coating was visible on the clothes of the persons sitting there. In view of these findings it is difficult to comprehend how it could be said that the plaintiff had failed to prove that special damage was not being caused to him on account of the offending brick grinding machine.

The court held that coming to the question of substantial injury, every injury is considered to be substantial which a reasonable person considers to be so. In assessing the nature of substantial injury, the test to be applied is again the appraisement made of the injury by a reasonable person belonging to the society. In view of the fact found by the two courts below concurrently, it was impossible to hold that no substantial injury was being caused to the plaintiff-

appellant. Causing of actual damage by the act complained of as a nuisance is beside the point. If actual damage or actual injury were to be the criterion a person will have to wait before the injury becomes palpable or demonstrable before instituting a suit for its abatement. Any act would amount to a private nuisance which can reasonably be said to cause injury, discomfort or annoyance to a person. For reasons stated above the appeal must succeed.

A plaintiff in a tort, action may sue for damages or an injunction or both. *J.C.Galstaun* v. *Dunia Lal Seal*[38], may be the earliest reported pollution case in India. It is an illustration of the common law regulatory system existing in the pre-industrialized society. It is a case where perpetual injunction to abate a nuisance was granted alongwith damages on account of the same. In this case the Plaintiff had a garden-house in the Manicktollah Municipality and the Defendant had a shellac factory situated 200 or 300 yards to the north-west of it. The Defendant discharged the refuse-liquid of his manufactory into a Municipal drain that passed along the north of the Plaintiff's garden, and the Plaintiff alleged, first, that the liquid was foul-smelling and noxious to the health of the neighbourhood and specially to himself, and, secondly, that it had damaged him in health, comfort and the market value of his garden property. The Plaintiff had, therefore, asked for a perpetual injunction against the Defendant to restrain him from discharging the liquid refuse into the Municipal drain and for five thousand rupees as damages.

The Subordinate Judge decreed the suit, granted a perpetual injunction and awarded the Plaintiff a thousand rupees as damages. The Defendant went for appeal against the decree. On appeal it was held that the defendants action constitutes a legal nuisance, which the Plaintiff is entitled to restrain. Carrying on an offensive trade so as to interfere with another's health and comfort or his occupation of property has been constantly held in England to be a legal nuisance against which the courts will give relief.

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[38] (1905) 9 CWN 612.

The Court observed that it is plain that if no injunction is issued, there will be nothing to prevent defendant from aggravating the present nuisance by further enlarging his factory and discharging still more refuse into the drain. An injunction for the permanent stoppage of the nuisance is the only effectual remedy, and they have abundance of authority for issuing an injunction in the cases decided in England.

With regard to the question of the damage caused to the Plaintiff, objections have been urged against the opinion formed by the Subordinate Judge. Persistence in a proved nuisance has been held in England to be a just cause for giving exemplary damages. The Defendant has certainly persisted in spite of Municipal warnings. This, therefore, is not a case in which the damages awarded should be nominal. There can be no doubt that material injury has been caused to the Plaintiff and the damages should be substantial; and, while holding this view, they thought that Subordinate Judge's estimate is reasonable and not excessive. For these reasons, they affirmed the decree of the court below and dismiss this appeal with costs.

In *Rapier* v. *London Tramways*[39], the defendants kept a large number of horses in the stable to run tramways and the noise and smell therefrom was complained of by the neighbourers, the interference amounted to nuisance and the same was stopped by issuace of injunction.

A similar incident was decided by the Calcutta High Court in *Nirmal Chandra* v. *Municipal Commissioner, Pabna*[40], where the court held that injunction is the usual and proper remedy in case of continuing nuisance unless the injury is trivial. In this case the plaintiff sued the Municipality for erecting a defective Hackney carriage stand with no suitable contrivance for drainage by Pabna Municipality had become a source of nuisance to the neighbours. The plaintiff also complained that the hackney stand in front of the plaintiff's property was causing nuisance, and by reason of the bad smell, his tenants have left. The District judge inspected the locality and found that there was no

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[39] (1836) 2 KB 468.
[40] AIR 1936 Cal 707.

proper drain or channel to drain off the urine of the horses. The result was that offensive matter drains into and accumulates in a long strip of land between the pucca stand and the plaintiff's land. But the Ld. District Judge found that the smell emitting from the stand itself is no more noxious or disagreeable then the smell emitting from the street of Pabna generally. The Ld. District Judge refused the prayer of injunction but awarded the plaintiff Rs. 50 as damages. The plaintiff preferred an appeal against this judgement and decree of the Learned District Judge of Pabna. The High Court opined that injunction is the usual and proper remedy in the case of continuing nuisance. It ought to grant to some form unless the injury complained is trivial. The High Court observed:

> "I hold that injunction is the proper relief. Having taken all the circumstances into consideration I think that Commissioners of the Municipality should not be directed to remove the stand elsewhere, but that they should be directed to take proper care in the matter of keeping the stand and the adjoining places reasonably clean and for that purpose they are directed to clean and to keep in a reasonably clean state the strip of land in between the hackney carriage stand and the plaintiff's land by providing a suitable pucca drain. They are accordingly directed to construct a suitable pucca drain on that piece of land within six months from this date. If they fail to do so the plaintiff will have such a drain constructed and recover the costs thereof from the Commissioners of the Municipality. As I am giving the plaintiff an injunction in this limited form, I discharge decree for damages."[41]

In *Christie* v. *Davey*[42] the defendant alleged that he was being irritated by considerable amount of music and singing lessons by the plaintiff. In this case the plaintiff gave music and singing lessons for four days per week, totaling 17 hours. The neighbour who was aggrieved by the same had resorted to knocking on the party wall, beating trays, whistling, shriking and in this way interfering with the music teaching. It was held that this was not an unreasonable use of the house, which could be restrained by an injunction. But the person who was interfered with the music teaching was found to have done

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[41] Id. At p.710.
[42] (1893) 1 CH 316.

so out of malice, which was a significant factor and caused a nuisance and as such an injunction was granted against such nuisance caused by the neighbour.

In *Rushmer* v. *Polsue and Alfeiri Ltd.*[43], in a neighbourhood devoted to printing, a printing office was established next door to the plaintiff's residence, which rendered sleep impossible. It was contented that a person living in that locality couldnot complain of such a noise as the neighbourhood carried on, and was devoted to printing work. This argument was repelled by the Court of Appeal, and in repelling it Cozens-Hardy L.J. especially observed:

> "I cannot assent to this argument. A resident in such a neighbourhood must put up with certain amount of noise.... but whatever the standard of comfort in a particular district may be, I think the addition of a fresh noise caused by the defendants' works may be so substantial as to create a legal nuisance".[44]

When the case went on appeal, the House of Lords approved these observations. Accordingly it was concluded that the area in which nuisance occurs may be an industrial or noisy area, but that does not give right to create noise and disturbance of sleep of others at night.

In *Hollywood Silver Fox Farm Ltd.* v. *Emmet*[45], the plaintiff Hollywood Silver Fox Farm Ltd carried on the business of breeding Silver foxes on their land. The vixen of these animals are extremely nervous during the breeding season and if they are disturbed by any loud noise, they may not breed during that season, may miscarry or kill their own young ones. The defendant maliciously caused guns to be fired on his own land but as near as possible to the breeding pans with a view to cause damage to the plaintiff by interfering with the breeding vixen. The Court held that defendant had no right to disturb others and the plaintiff was entitled to an injunction and damages.

The principles enunciated in some of the earliest English cases have been followed by the High Courts in India. In the case of, *Land Mortgage Bank*

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[43] (1906) CH 234.
[44] Id., at 250.
[45] AIR 1919 Mad 1185.

of India v. *Ahmedbhoy Habibbhoy*[46] which was decided in 1833, the plaintiff's buildings at Colaba known as 'Great Buildings' were situated very near a Hydraulic Press Company, which was converted into a spinning and weaving mill. The question was whether the noise made by the working of the machines, machinery and gear by the mill on the defendant's premises interfered with the comforts of the occupants of certain division of the two blocks of the plaintiffs' buildings. Sargent, C.J., while delivering judgement observed about the occupants of those blocks of the buildings in following words:

> "Fastidious or highly sensitive they probably are not as a rule, but they have a standard of comfort in which I cannot doubt that peace and quiet and freedom from noise must be very important factors; and the noise of the mill, as heard in the above divisions, I cannot but think is one which must seriously interfere with that standard of comfort. .....I am of opinion that the noise caused by the working of the mill has always constituted and still continues a nuisance to the occupants of divisions No. 2, 3 and 4."

The Division Bench, which heard the appeal, also came to the conclusion that the smoke, cotton fluff and noise proceeding from the mill caused serious inconvenience to the inhabitants of Division Nos. 2, 3 and 4 of the eastern block of the grant buildings.

In *Sadasiva* v. *Rangappa*[47] the appellant (defendant) purchased a house adjacent to the plaintiff's dwelling house and set up an oil mill of the country pattern in the yard of his house. The noise of the mill caused by the turning of the machine drawn by the bullocks, the state of the ground trodden by the bullocks and the droppings of the bullocks created much nuisance. The District Munsiff found that the machine occupied the entire vacant space in the defendants compound was very near the occupied portion of the plaintiff's house; the machine was worked by the defendant both day and night, that the noise caused by the working of the Machine was unbearable and prevented the defendant from attending to his photographic work; and the noise proceeding

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[46] ILR 8 Bom. 35.
[47] AIR 1925 All 392.

from the mill machine could be heard at a distance of two furlongs; and also black, dirty, foul smelling water containing mosquitoes and worms was found in the defendant's compound on account of the washing of the nuts and of the dung stored in it, especially during the rainy season. The District Munsiff came to the conclusion that the business of the defendant was an actionable nuisance for the abatement of which the plaintiff could sue. The appellate court substantially concurred in the findings of the District Munsiff. Then the defendant preferred second appeal before the High Court. The Madras High Court did not interfere with the decision of the courts below and dismissed the appeal with costs.

However, the plaintiff could not prove serious discomfort in *Biharilal* v. *James Maclean*[48], the plaintiff owned a house in Bezar Karta Ahmedganj in Farrukhabad city where the plaintiff owned and occupied a house. The defendant's flourmill worked by an oil engine was behind this house. On the allegation of nuisance the trial court had referred to the evidence only of one of the plaintiffs and held on the basis of that evidence that the soot arising from the chimney would fall upon the articles kept in the house of the plaintiffs, there would be bad smell produced from the kerosene oil and noise produced from the engine would cause substantial inconvenience to the tenants occupying that house. The High Court therefore thought that a case of substantial interference with the physical comfort of the residents of the house was not made out. It was also pointed out that a discomfort to be actionable must be substantial not only to persons with dainty, or elegant modes or habits of living, but to any person occupying the premises of the plaintiff, irrespective of his position in life, age or state of health. It was found by the High Court that another flourmill worked by a gas engine was already there at a distance of 20 to 25 paces and no body had taken objection on the score of discomfort. Relying on further evidence of several residents of locality, who deposed that the residents of the locality due to this oil engine suffered no discomfort. The Hon'ble High Court while allowing the appeal observed that whether anything

[48] (1924) ILR 46 All 297.

is a nuisance or not is a question to the determined not merely by abstract consideration of the thing itself but with reference to its circumstances; and where a locality is used for the purpose of carrying on a trade or manufacture, the fact that such trade or manufacture does not exist elsewhere, not far from the place cannot be left out of account.

In *Janki Prasad* v. Karamat Hussain[49], the plaintiff in a representative capacity had brought a suit for declaration of their right of worship and of taking out processions with music past an adjoining mosque and for an injunction restraining the defendants from interfering at any time with the aforesaid rights of the plaintiffs. In this case Mukherjee J. observed that interference with religious observances according to the notion of a particular class of individuals does not amount to private nuisance.

In *Shaikh Ismail Sahib* v. *Nirchanda*[50], the defendant had set apart a portion of his house for what he considered to be a charitable purpose viz. to allow anyone to use it temporarily (for performing marriage ceremonies, pujas etc. free of rent, and loud noise was caused there during the ceremonies by loud and discordant instruments long after the hour where people ordinarily go to sleep). It was held by the trial judge that the act of the defendant to be actionable nuisance must be something, which the society does not tolerate. Accordingly, the trial judge was of the opinion that there was no actionable nuisance. The High Court did not agree with the finding of the court below and held that it amounted to an actionable nuisance and that the plaintiff was entitled to an injunction restraining the defendant from making loud noise during hours of sleep, charity cannot be accepted as a defence in such cases.

In *Jawand Singh* v. *Mahomed Din*[51], it was held that though the plaintiffs had an inherent right to call out the 'azan' -- from the mosque, an injunction could be issued to restrain malicious acts of creating loud noise to the annoyance of the neighbours.

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[49] AIR 1931 All 674.
[50] AIR 1936 Mad 905.
[51] AIR 1919 Lah 6.

The following five propositions sum up the general law in India, in this regard.

1. Every person has a right to worship.
2. The right is independent of custom.
3. The right is not absolute but is limited by other or others.
4. The exercise of right may be limited by order of the public authorities, and
5. The Civil Courts on grounds of nuisance, public or private, may limit the exercise of the right.[52]

In *Dhanna Lal* v. *Chittorsingh Mahtapsingh*[53], it was held that the abnormal noise produced by the flourmill set up by the defendant, materially impaired the physical comforts of the occupants of B's house and as such amounted to actionable nuisance. The decision of the Madhya Pradesh High Court is important as the law of nuisance (as regards noise pollution) was summarized the principle governing nuisance caused by constant noise. The High Court referred English cases and a few Indian cases. The Indian cases referred by the High Court are (i) *Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy,* (ii) *Sadasiva* v. *Rangappa,* (iii) *Shaikh Ismail Sahib* case. From these cases the High Court deduced the principles governing nuisance caused by noise and summarized those principles as follows:

1. Constant noise, if abnormal or unusual can be an actionable nuisance, if it interferes with one's physical comforts.
2. The test of a nuisance causing personal discomfort is the actual local standard of comfort, and not an ideal or absolute standard.
3. Generally, unusual or abnormal noise on defendant's premises which disturbs sleep of the occupant of the plaintiff's house during night, or which is so loud during day time that due to it one cannot hear ordinary conversation in the plaintiff's house, or which does not allow the

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[52] B.S.Sinha, *Law of Torts through Indian Cases*, 1969 edn., p. 202.
[53] AIR 1959 MP 240.

occupants of the plaintiffs house to carry on their ordinary work is deemed to be a noise which interferes with one's physical comforts.

4. Even in a noisy locality, if there is substantial addition to the noise by introduction of some machine, instrument, or performances at defendants premises, which materially affects the physical comforts of the occupants of the plaintiff's house, then also the noise will amount to actionable nuisance.
5. If the noise amounts to an actionable nuisance, the defence that the defendant is making a reasonable use of his own property will be in effectual. No use of one's property is reasonable if it causes substantial discomfort to other persons.
6. If the defendant is found to be carrying on his business so as to cause a nuisance to his neighbours, he is not acting reasonably as regards them, and may be restrained by injunction, although he may be conducting his business in a proper manner and according to rules framed in this behalf either by the municipality or by the government. The latter defence can be effective in a case of public nuisance.
7. If an operation on the defendants' premises cannot by any care and skill be prevented from causing a private nuisance to the neighbours, it cannot be undertaken at all, except with the consent of those injured by it.
8. The right to commit a private nuisance can in certain circumstances, be acquired either by prescription or by the authority of a statute.

Applying these principles to the facts of the instant case the Court stated that the abnormal noise produced by the flourmill materially impaired the physical comforts of the occupants of the house of the respondent (Plaintiff) and as such amounted to actionable nuisance. The defence taken by the appellants (defendants) is that the Municipal Committee had given a license for starting the flourmill and the license had been renewed. On this point B.K.Chaturvedi J. stated: "This in my opinion, is not an effectual defence in such cases. The

Municipality is after all a creature of the statute. It has no power to confer rights upon anybody to commit private nuisance. In this view of the matter, it is clear that this appeal must fail."

In *Radhey Shiam* v. *Gur Prasad*[54] the Court quoted the decision of *Dhanna Lal* v. *Chittorsingh Mahtapsingh*[55] and opined that applying the principle set forth it is manifest that a person can claim injunction to stop nuisance if in a noisy locality there is substantial addition to the noise by introducing of some machine, instrument or performance at defendant's premises which materially affects the physical comforts of the occupants of the plaintiff's house. The appellate court below has found as a fact that the running of the impugned machines would seriously interfere with the physical comfort of the plaintiff and the members of his family according to the ordinary notions prevalent among reasonable men and women. This finding being based on evidence is not assailable in second appeal. The plaintiffs were therefore, rightly held to be entitled to the injunction claimed by them. There is no merit in both the appeals.

The Punjab High Court in *Ram Rattan* v. *Munnal Lal*[56] took up the problem of nuisance created by the additional noise in noisy locality. The court while rejecting the plea of serious addition of the noise as to warrant the conclusion that actionable nuisance existed, expressed the view: "The standard of comfort differs according to the situation of the property and the class of people who inhabit there. But whatever the standard of comfort in a particular district may be, the addition of fresh noise caused by the defendants works may be so substantial as to create a legal nuisance". The Court further said: Thus a locality devoted to noisy trades (such as printing and allied trades in a printing house of a factory) if subjects the occupier of an adjoining residence to such an increase of noise as to interfere substantially with the ordinary comfort of human existence according to the standard of comfort prevailing in the locality, that is sufficient to constitute an actionable wrong.

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[54] AIR 1978 All 86.
[55] Supra note no. 53.
[56] AIR 1959 Pun. 217.

In *Datta Mal Chiranji Lal* v. *L.L.Prasad*[57] the appellant (defendant) established an electric flourmill in a premises in the Bazar locality of Mussorie, which was adjacent to the plaintiff's house. The plaintiff alleged that it caused a lot of noise and vibration so that plaintiff and the members of his family found it difficult to reside in their house, and it caused great inconvenience and discomfort to them. The learned Judge held that the mill caused inconvenience and trouble to the plaintiff and the residents of his house and the running of the mill amounted to a nuisance. He considered the observations made in several judicial pronouncements and took the view that the plaintiff's suit was well founded. He therefore decreed the suit. On appeal by the defendant, it was contented that in an action for private nuisance, substantial damage or injury must be proved, which has not been done in the present case. Secondly, he contended that the house of the parties situate in the Library Bazar, a busy market place in Mussorie and the standard of physical comfort and quietness demanded by the plaintiff was unreasonably high. The Allahabad High Court dealt with these two contentions together and stated: Every owner of the property is entitled to use it beneficially subject to such limitations as may be incidental to similar and beneficial enjoyment of other owners of their properties. The plaintiff in the instant case is therefore entitled to reside comfortably in his own house, and if the defendant by running his flourmill produces such noise and vibrations as to cause substantial discomfort to the plaintiff and does not allow him to reside comfortably in his own house the defendant's action amounts to a nuisance.

The learned High Court Judge further maintained that: Damage to the property may be caused after some time, the injury to health might become evident after some time, but it does not mean that the plaintiff should wait till such happens. This means that plaintiff may claim preventive action by the court as soon as such danger appears.

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[57] AIR 1960 All 632.

Finally, the Allahabad High Court approved the decision of the court below on the ground that the running of the flourmill is a nuisance; and dismissed the appeal.

Gotham Construction Co. v. *Amulya Krishana*[58], tells the story of nuisance caused by noise in a residential area where the peace and quiet of the place was broken by the terrific sound coming out of the worlshop of Gotham Construction Co. The workshop worked every day from 8 am or thereabouts to 8 pm or even later. The appellate Judge found that the hammering sounds coming from the factory caused substantial interference with the comforts of the plaintiffs and others residing in the locality. The appellant defendant came up to the Calcutta High Court in second appeal. The Calcutta High Court approved the decision of the courts below and observed:

> " In granting a decree for perpetual injunction the principle a court of law goes by, is to do justice to both the parties, if it can. The above form of injunction secures just that. Thus in a suit for perpetual injunction to prevent a private nuisance created by hammering of metal sheets in the defendant's workshop a decree 'permanently restraining the defendant from carrying any sound nuisance in the workshop', saves the plaintiffs and others living in the locality from being discomfited by nuisance from noise. It keeps too the business of the defendant intact, provided care is taken by scientific method to keep the noise within the limits of the workshop".[59]

In *Ram Lal* v. *Murtazabad Oil & Cotton Ginning Factory*[60], the appellant (plaintiff) had instituted a suit for permanent injunction restraining the respondents (defendants) from erecting or working flour mill, oil expellers, cotton ginning machine or any other power driven machinery in the premises ABCD. The premises are situated in the new grain market within the municipal limits of Jagadhri and lies beside the residential house of the plaintiff. It was stated in the plaint that the premises were reserved for residential purposes and as shops for sale of agricultural produce and other consumer articles. The trial court found no case of actionable nuisance but the High Court while allowing

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[58] AIR 1968 Cal 91.
[59] Id., at 99.
[60] AIR 1968 P & H 399.

the appeal of the plaintiff, granted permanent injunction restraining the defendant from the use of the machinery. Hon'ble Justice Tekchand expressed his opinion as follows:

> "Actionable nuisances are of multiple varieties; and they include unreasonable noises or vibrations and other causes which are responsible for personal inconvenience resulting in interference with one's quiet enjoyment. In the very nature, it is not possible to lay down absolute standards. It is always a question of degree whether interference with comfort or convenience is sufficiently serious to constitute a nuisance. The seriousness is governed by time, place, extent or the manner of performance of operations that are said to have become a nuisance. In our modern society and in the machine age, every one must put up with certain amount of discomfort resulting from legitimate activities of one's neighbour. In the courts, the old maxim *sic utere tue, ut alienum non laedas* – so use your own property as not to injure your neighbours, and the homely phrases 'give and take', 'live and let live' are indicative of the principles which are borne in mind, but these do not serve exact yardstick for it is not possible to measure the extent of the discomfort or annoyance. It is generally conceded, that in determining the question whether a nuisance has been caused, a just balance must be struck between the right of the defendant to use property for his own lawful enjoyment, and the right of the plaintiff to the undisturbed enjoyment of his property. In order to be actionable, a nuisance must materially interfere with the comfort or convenience of ordinary persons judged by the standards of an average man. The substantial extent of the discomfort has to be determined not merely with reference to the plaintiff, but from the point of view of any person occupying the plaintiff's premises irrespective of his position in life age or state of health....
> We have to bear in mind that *len non favet delicatorum votes* – the law favours not the wishes of the dainty. Another consideration to be borned in mind is the character of neighbourhood. A person living in the heart of the large manufacturing town cannot reasonably expect the same freedom from noise as in a secluded countryside.[61]

Hon'ble Justice Tekchand from a review of case laws deduced the following principles relating to actionable nuisance:

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[61] Id., at 401.

1. In determining whether an actionable nuisance exists, the degree or the extent of the annoyance or the inconvenience is to be considered. For what may amount to a nuisance in one locality may in another place and under different surroundings be deemed unobjectionable.
2. As the precise degree of annoyance or inconvenience does not admit of exact calculation, each case depends largely on its own facts.
3. The injury or annoyance, which warrants a relief against the nuisance complained of, must be of real and substantial character disturbing comfort or impairing enjoyment of property. For slight, trival or fanciful inconvenience resulting from delicacy or fastidiousness, no relief can be granted.
4. As a general rule, but allowing for known exceptions, a nuisance involves the idea of continuity or recurrence. Such nuisance, if continued indefinitely, will be actionable though not if indulged in only one or two occasion.
5. Actionable nuisance does not admit of enumeration and any operation, which causes injury to health, to property, to comfort, to business, or to public morals, would be deemed a nuisance.
6. In certain circumstances and under certain conditions, even a natural tendency to cause injury, and a substantial fear or reasonable apprehension of danger, may constitute nuisance.
7. Jarring and vibration caused to the plaintiff's premises, and noises exceeding a certain norm and interfering with the actual physical discomfort of persons of ordinary sensibilities, are deemed actionable nuisances. They have to be of such intensity as unreasonably interfering with the comfort and enjoyment of property although no physical injury to the health of the complaining party or his family is shown. But no fixed standard can be set as to quantum of noise that constitutes actionable nuisance and it is a matter, which depends upon the circumstances of each case.

8. Once a noise is considered to be nuisance of the requisite degree, it is no defence to contend, that it was in consequence of a lawful business or arose from lawful amusements or from places of religious worship.[62]

In *G. Veerabhadrappa* v. *M.Nagamma*[63], the plaintiff filed a suit for restraining the defendant by means of a permanent injunction from installing or running the chilly pounding machine in the suit premises. The plaintiff's alleged that the pounding machine was set up without complying with the requirements of law and great nuisance was being created on account of vibration due to the pounding of the chilly. This had potential danger to the safety of the buildings as cracks had developed after its installation. Secondly, chilly dust shooting out of pounding pit is a health hazard to the plaintiffs and their family members and lastly the sound and vibration caused mental agony to the plaintiffs and their family members. It was being worked day and night; their mental peace was also affected and sleeps disturbed. On the issue of health hazards, the trial court found the issue in the negative but held that the working of the machine causes nuisance on account of sound and noise interfering with the normal work, life and mental peace of the plaintiffs and other inhabitants in the locality. Accordingly the trial court restrained the defendant from running the chilly pounding machine in the premises. The first appellate court concerned with the findings of the trial court.

In the second appeal, the Karnataka High Court held that in a suit by neighbours for permanent injunction restraining the defendant from running the chilly pounding machine in the locality as the sound and noise produced by the machine disturbed the normal life of the plaintiffs, the concurrent findings of the courts below that the working of the machine with metallic pounder produced great sound and noise which was a nuisance to the plaintiffs disturbing their normal life are findings of facts which have to be accepted in second appeal. However, Karnataka High Court further held that in

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[62] Id., at 402-403.
[63] AIR 1988 Kant. 277.

circumstances of the case, it would not proper to absolutely restrain the defendant from working the machine only on the ground that such working caused nuisance when there was no hazard to the health or safety of the buildings of the plaintiffs and the nuisance could be abated by adopting certain devices to prevent or minimize such nuisance.

In *D. Ramanatha* v. *S. Razaack*[64], the case of the plaintiff was that he had been enjoying light and air from the windows and ventilators from the upstairs of his building for 50 years. Therefore, the plaintiff has acquired an easementary right. The defendant's construction of a two-storied building would completely shut up those windows and there will be no air and light and there will be no passage through which the air and light pass to the property of the plaintiff. Hence, he averred that the defendant is not entitled to obstruct the air and light coming through the windows. Hence, he instituted the suit for permanent injunction against the defendant with a prayer for issuance of an injunction permanently, prohibiting the defendant from shutting out the windows and ventilators situated in the plaintiff's property and for costs.

The suit for injunction was dismissed as not tenable. The court observed:

> "It may be mentioned that sections 15, 28, 33 and 35 of the Easements Act should be read together in the matter of prescriptive right with regard to the flow of light and air. Mere diminution of air and light would not give the plaintiff a cause of action to sue for injunction. It should be substantial interference with the normal enjoyment of light and air so as to disturb the usual mode of life of the inhabitants of the building. In other words it should amount to an actionable nuisance."[65]

In *B. Venkatappa* v. *B. Lovis*,[66], the Andhra Pradesh High Court upheld the lower court's mandatory injunction directing the defendant to close the holes in a chimney facing the plaintiff's property. The court ensured enforcement of its order by authorizing the plaintiff to seal the holes at the defendant's cost, if the defendant failed to do so. The High Court stated that the

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[64] AIR 1982 Kant. 314.
[65] Id., at 318.
[66] AIR 1986 AP 239.

smoke and fumes that materially interfered with ordinary comfort were enough to constitute an actionable nuisance and that actual injury to health need not be proved. The court also observed that the existence of other sources of discomfort in the neighbourhood were no defence, provided that the source complained of materially added to the discomfort. The court rejected the defence that the plaintiff 'came to the nuisance': 'The fact that the nuisance existed long before the complainant occupied his premises, does not relieve the offender unless he can show that as against the complainant he has acquired a right to commit nuisance complained of'.

In *Rajat Ali* v. *Sugni Bai*[67], the plaintiff sued the defendant for eviction. One of the grounds for such eviction was that the defendant had installed machinery, which was committing acts of nuisance to other occupants of the buildings in the neighbourhood. The Court observed that the machinery was installed in the building since 1970 and there was no complaint of nuisance prior to filing eviction petition. The Court opined that in a wide sense any industrial activity might create sound while such activities are in operation. Such sound may be uncomfortable to those who are over sensitive to such noise. But then care must be taken because every inconvenience cannot become an actionable nuisance. To make it an actionable the nuisance must be of a reasonable perceptible degree. The Supreme Court in this case was not inclined to treat the noise as amounting to nuisance due to the aforesaid reasons. Therefore, the High Court decision that the respondent had caused nuisance and damages to the premises was set aside by the Supreme Court.

In *Kuldip Singh* v. *Subhash Chandra Jain*[68], The plainff, Subhash Chandra Jain, feared that the baking oven and 12 foot chimney built by his neighbour would cause a nuisance when the bakery commenced. The trial court restrained the defendant since operation of the oven 'would result in emitting smell and generating heat and smoke which taken together would amount to nuisance'. The Supreme Court drew a distinction between an existing nuisance

[67] AIR 1999 SC 283 at p. 286-287.
[68] 2000 (2) Scale, 582.

and a future nuisance: 'In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The Court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff.' In a remarkable conclusion, the apex court found that the plaintiff's apprehension about a smoking oven next door causing a nuisance was not justified by the pleadings or the evidence and dismissed the suit.

2.3. (ii) Public Nuisance

If smoke vapour and noisome gases are communicated to the air which enters the plaintiff's house so as to cause inconvenience to the occupier thereof making the house less comfortable, the act will be a nuisance. When such nuisance is committed to make the atmosphere noxious to public health, it is indictable as an offence under Section 268 of the Indian Penal Code. There have been penalties laid down under the Air (Prevention and Control of Pollution) Act 1981, which is dealt in a separate [69]. Proceeding under Section 133 of the Criminal Procedure Code can also be taken for removing a public nuisance caused by Air, Noise or other environmental pollution. Two memorable decisions of the Supreme Court have added new dimension to this rarely used provision of law.

Municipal Council, Ratlam v. *Vardhichand*[70] has given flesh and blood to skeleton provisions in Section 133 of the Code; *Krishna Gopal*[71] gives it a new vigour and life.[72] Some cases discussed here would enable us to understand how far the right to a pollution free environment was a part of the basic jurisprudence of the land. It would also establish how effective was the Penal provisions used to control air pollution.

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[69] Chapter V.
[70] AIR 1980 SC 1622.
[71] (1986) Cri.LJ 396.
[72] See Chapter III.

Gobind Singh v. *Shanti Swaroop*[73], is the first case in which the Supreme Court examined the scope of Section 133 of the Code to approve the order of the Magistrate to demolish the oven and chimney of a baker as the baking process caused air pollution. The Supreme Court of India while upholding the Magistrates observations rightly remarked that:

> "We are of the opinion that in a matter of this nature (public nuisance) where what is involved is not merely the right of the private individual but the health, safety and convenience of the public at large, the safer course should be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery."

In *Bhuban Ram* v. *Bibhuti Bhusan*[74], a steam paddy husking machine working day and night was alleged to be causing public nuisance by the dust, smoke, smell and noise of the machine. On complaint the District Magistrate prohibited the working of the mill by night and summoned the proprietors and the manager under Section 290 of the Indian Penal Code. At the trial the persons living close to the mill said that they were annoyed by the mill in various ways but chiefly because it disturbed their sleep at night. The trying Magistrate held that the working of the mill at night in a residential portion of the town was objectionable and that the noise of it amounted to a public nuisance and fined the manager and three proprietors Rs. 50 each under Section 290 of the Indian Penal Code. On revision petition the Session Judge set aside the conviction of the proprietors and was of the opinion that their conviction was bad in law. However, the Session Judge approved the conviction of the Manager.

The Calcutta High Court agreed with the finding of the learned Session Judge. According to the High Court the proprietors could not be made liable, as they were not living in the premises where from the nuisance caused. On this point the court held:

> "Speaking Generally, where the user of premises gives rise to a nuisance the person liable under Section 290 of Indian Penal

[73] AIR 1979 SC 143.
[74] AIR 1919 Cal 539.

> Code is the occupier for the time being whoever he may be. A proprietor who is not in occupation of the premises is not liable unless his conduct amounts to an abatement of the offence under that section."[75]

The general rule is that principal is not criminally answerable for the acts of his agent. The High Court did not interfere with the conviction order of the manager and directed that the fine imposed on the proprietors must, if paid, be refunded.

In *Krishna Mohan* v. *A.K.Guha*[76], there was an iron yard belonging to the petitioner. The Principal of a Training School near the yard complained to the District Magistrate that an intolerable noise was made in the yard. After a police enquiry the Sub Divisional Magistrate issued a notice under Section 133, Criminal Procedure Code, calling upon the petitioners to abate the nuisance or to show cause against the order. Subsequently the Magistrate dealt with the matter under Section 137, Criminal Procedure Code and made the order absolute. On revision petition the case came before the Calcutta High Court. It was contended on behalf of the petitioner that the noise was not in fact a nuisance, that it was made to carry on a lawful trade and that the Magistrate had no jurisdiction to make the order. Rejecting this contention the Court held: "A noise made in the carrying on of a lawful trade under a licence, if injurious to the physical comfort of a community, is a public nuisance and a Magistrate has jurisdiction to proceed under Section 133 for the abatement of the nuisance". The Court further pointed out that existence of an alternative remedy does not deprive the Magistrate of jurisdiction. On the question evidence it stated: "Evidence is not to be judged by volume and the testimony of a few witnesses may be sufficient to prove that a noise is injurious to the physical comfort of a community"[77]. Thus the Court approved the order of the Magistrate.

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[75] Ibid.
[76] AIR 1920 Cal 550.
[77] Ibid.

In *Emperor* v. *Ram Charan Ahir*[78], Miss Beech, a Missionary lady residing in Sultanpur, made a report complaining against the conduct of Ram Charan Ahir, a chaukidar in the Private employment of Babu Ganpat Sahai, a pleader of Sultanpur. Her complain was to the affect that the chaukidar of Babu Ganpat Sahai made a noise at night by shouting "*Jagte raho, jagte raho*" and thereby disturbed her sleep at night. Upon this complain the police prosecuted the chaukidar for an offence under Section 290, Indian Penal Code. The Trial Magistrate tried the case summarily and fined Rs. 20 under Section 290 Indian Penal Code. The Session Judge to the High Court under Section 438 reported the case.

The first plea urged before the Sessions Judge was that the shouting at night did not amount to a public nuisance within the meaning of the term "public nuisance" as defined in Section 268 Indian Penal Code. The Session Judge stated in his order that the injury contemplated by Section 268, Indian Penal Code must be a common injury and must affect the public and not any one individual. The fact that Miss Beech suffers annoyance because chaukidar makes a noise at night does not amount to a public nuisance within the meaning of the term as defined in Section 268 I.P.C. The expression 'people in general' means a body or a considerable number of persons. The law makes no allowance for the susceptibilities of hypersensitive persons like Miss Beech. The High Court agreed with the Session Judge and set aside the conviction and sentence. The Court also directed the refund of fine, if paid.

In *Murlidhar* v. *Onkar*[79], Onkar Vyankat Patil applied to the District Magistrate, East Khandesh at Jalgaon complaining that the flour mill installed by the petitioner Murlidhar Bahtai Patil close to his house was a cause of nuisance to him as also to the other residents in the locality. He alleged that the operation of the flourmill created vibrations and those vibrations were likely to cause danger to the people residing nearby. After due enquiry a conditional order was passed under Section 133, Criminal Procedure Code, directing the

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[78] AIR 1926 Oudh 414.
[79] AIR 1961 Bom 263.

flourmill owner to remove the mill within a period of two months or to appear before the Sub divisional Magistrate to show cause why that order should not be enforced. When the case came before the High Court Hon'ble Justice Shah stated:

> "An order under this Section could be justified only if the conduct of the trade is injurious to health or physical comfort of the community. These words necessarily mean that the conduct of trade is injurious in present to the health or physical comfort of the community. It follows, therefore, that a distant possibility of an injury to the health or physical comfort of the community by reason of the conduct of any particular trade would not justify an order being made under this section. Unless there is an imminent danger to the health or physical comfort of that community or the conduct of the trade or occupation is in fact injurious to the health of or the physical comfort of that community, in my opinion an order under Section 133 cannot be passed".[80]

Shah J. agreed even assuming that an order could be passed under the Section to safeguard the properties of the people, in the surrounding locality, the danger even to those properties should be so imminent as to call for the intervention of the Magistrate under Section 133 of the Criminal Procedure Code. This does not mean that the people of the surrounding locality should wait until the houses actually collapse.

In *Ivor Hyden and others* v. *State of Andhra Pradesh*[81], the petitioners (accused) were convicted by the Trial Court for the offence of public nuisance under Section 290 of Indian Penal Code. They were found guilty of playing a radio loud. The Andhra Pradesh High Court in revision quashed the order of conviction by holding that the act was too trivial to be taken cognizance of the act of playing a radio loud was considered to be excusable under Section 95 of Indian Penal Code.

In *Himmath Singh* v. *Bhagwan*[82], the Rajasthan High Court held that the offensive smell caused the particles of fodder carried by the Sand wind and

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[80] Id., at 265.
[81] 1984 Cri LJ 16 (NOC) 30.
[82] 1988 Cri LJ 614,

noise caused by the fodder cutting machine, to the residential locality created public nuisance.

The Madhya Pradesh High Court in *Krishna Gopal* v. *State of Madhya Pradesh*[83]held that the order of dismantling the alkaline factory causing noise and odour in the residential locality was valid despite the fact that only a single person took up the matter with the executive magistrate.

In *Krishna Panicker* v. *Appukuttan Nair*[84], the Kerala High Court held that Special Acts like the Water Act or Air Act couldn't be held as repealing Section 133 of the Code of Criminal Procedure and put at rest the controversy on the question.

In *State of Madhya Pradesh* v. *Kedia Leather and Liquor Ltd*,[85] the Supreme Court laid down that Section 133 of Code of Criminal Procedure is not impliedly repealed by the enactment of the Water and Air Acts and that it continues to be a potent weapon for fighting ecological maladies and pollution of water and air.

The discretionary power of the Court under Section 133 is not unbridled or uncontrolled. The Court has to be careful in applying its mind when a complaint is brought before him. *Pranab Kumar Chakraborty* v. *Md. Akram Hussain*'s[86] decision is an illustration where the Gauhati High Court opined that the Magistrate must satisfy himself in an objective manner in finding out whether there is nuisance or likelihood of nuisance. In this case the owner approached the Magistrate and complained that the tenant had kept some unhygienic articles in the room kept under lock and key for more than five months and that those articles were producing odour. The lower Court granted relief under Section 133 Cr. P.C. As the police did not find any article causing odour, the High Court quashed the order of the Magistrate and the room was restored to the tenant. The High Court decided that with the help of an order

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[83] 1986 Cri LJ 396.
[84] (1993) 1 KLJ 725.
[85] (2003) 7 SCC 389.
[86] (1991) Cri LJ 3156.

under Section 133 of the Code of Criminal Procedure, a landlord could not evict his tenant.

The scope of law of nuisance under Section 133, Code of Criminal Procedure, was extended by other High Courts. In *Ajeet Mehta* v. *State of Rajasthan*[87], it was alleged that the business of loading, unloading and stocking of fodder near a residential locality was a serious health hazard. The whole atmosphere was polluted on account of fine dust particles of the fodder. Endorsing the order of the Magistrate for removal of the business from the locality, the Court observed:

> It is very unfortunate that little care is now bestowed to the pollution problem and very lackadaisical approach is taken... very rarely people come forward and resist the same. They are normally discouraged on account of slow moving of the state machinery as well as the Court. But this is one of the unique cases in which the petitioner has taken the whole exercise and brought the motion to put an end to this problem of pollution of that area.[88]

The Kerale High Court in *Madhavi* v. *Thilakan*[89] brought an action against nuisance created by an automobile workshop in a residential area. The Court held:

> We recognize every man's home to be his castle, which cannot be invaded by toxic fumes, or tormenting sounds. This principle expressed through law and culture, consistent with nature's ground rules for existence, has been recognized in Section 133(1)(b). The conduct of any trade or occupation, or keeping of any goods or merchandise injurious to health or physical comfort of community could be regulated or prohibited under the Section.

The provision under the Code of Criminal Procedure does not mean conferring on the executive magistrate, criminal jurisdiction. On the contrary, the provision contains the inherent characteristics of preventive and remedial jurisdiction. Only disobedience of an order of the executive magistrate invites

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[87] (1990) Cri LJ 1596.
[88] Id., at 1598 per Mathur J.
[89] (1989) Cri LJ 499.

criminal prosecution.[90] The Supreme Court of India in *Municipal Council Ratlam* v. *Vardhichand*[91] was faced with a difficult question to decide whether by an affirmative action under Section 133, Code of Criminal Procedure, 1973, a Court can compel a statutory body (i.e., municipal council) through its officers to carry out its duty to the community by constructing sanitation facilities at great cost and on a time bound basis and thus abate nuisance on pain of punishment under Section 188 of Indian Penal Code.

The facts of the case is of common occurrence in Indian urban centers and are capable of universal application depicting the silent subjection of groups of people to squaler and of callous public bodies habituated to deleterious inaction. Residents of the locality within the limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under Section 133 of Criminal Procedure Code, 1973 to direct municipality to do its duty towards the members of the public. The Magistrate being convinced by the applicant's grievances gave directions to the Ratlam Municipality to draft a plan within six months for removing nuisance.

The Sessions Court reversed the Magistrate's order in appeal. However, the High Court concurred with the Magistrates' order and approved of it. The Supreme Court in appeal upheld the High Courts' contention and affirmed the Magistrates' order.

Section 133, Code of Criminal Procedure, is categoric although reads discretionary. Judicial discretion when facts for the exercise are present has a mandatory import. Therefore, when the Sub divisional Magistrate, Ratlam has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance,

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[90] P.Leelakrishnan, *Environmental Law In India*, Butterworths India, 1999, p.43.
[91] Supra note no. 70.

triggered by the jurisdictional facts. The Magistrates' responsibility under Section 133, Cr.P.C. is to order removal of such nuisance within a time to be fixed in order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by Section 188, Indian Penal Code. Therefore, the Municipal Commissioner or other executive authority bound by the order under Section 133 Cr.P.C shall obey the direction because disobedience if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133, Cr.P.C. read with the punitive temper of Section 188, I.P.C. make the prohibitory act a mandatory duty. The Court further observed that- although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social Justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133, Cr.P.C. In the exercise of such power, the judiciary must be informed by the broader principal of access to justice necessitated by the conditions of developing countries.

Ratlam[92], *Krishna Gopal*[93] and *Madhav*[94] illustrate the judicial enthusiasm in rejuvenating the rarely used provision in the Code of Criminal Procedure for protecting the environment. One finds that enthusiasm slips in a few cases, where the judiciary had to deal with pollution of water and air. Two decisions *Tata Tea Limited* v. *State of Kerala*[95] and *Abdul Hamid* v. *Gwalior Rayon Silk Manufacturing Co*[96], show that courts at times tend to limit the

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[92] Supra note no. 70.
[93] Supra note no. 83.
[94] Supra note no. 89.
[95] 1984 KLT 645.
[96] (1989) Cri LJ 2013.

application of the concept of public nuisance only to those areas not covered by new legislation.

Tata Tea was decided by the Kerala High Court four years after *Ratlam*. The question was whether the District Magistrate could prevent the discharge of effluents to the river from a factory after the authorities under the Water Act already granted the consent and while actions were available under that law. The petitioners contended that resort to an action against public nuisance is not possible as there is a specific law laying down machinery to deal with water pollution. Accepting the contention, the Court held that in so far as the action relates to the prevention of water pollution, the provisions in Section 133 of CrPC was impliedly repealed by the Water Act of 1974. According to the Court, the petitioner was correct in contending that the Water Act is a code in itself so far as it provides an exhaustive remedy against pollution and violation of the law relating to the control of pollution of water. The State Pollution Control Board can prosecute, or under the old provision give sanction to prosecute the offenders[97] and then a judicial first class magistrate court can take cognizance of the offence under the Water Act. Access of citizens to the executive magistrate under Section 133 of the CrPC may not be conditioned by any such restrictions. The Court said, this did not make any difference, since under the provisions of the Water Act, a citizen could approach the Board, which could, or with the sanction of the Board a citizen could petition a judicial magistrate. The Court concluded that the executive magistrate had no jurisdiction to deal with pollution of water under Section 133 of the CrPC as a special statute, which provided the machinery for redressal of grievances, had now covered the area.

The power vested in the Board by the Water and Air Acts to sanction prosecution, as it stood before the amendments in the late eighties, was the ground on which the Madhya Pradesh High Court denied the Magistrate

[97] The 1988 amendment gave the right to prosecute directly to a person but only after giving a sixty day notice to the board.

jurisdiction under Section 133 of the CrPC in *Abdul Hamid*[98]. According to the Court, the Water and Air Acts were meant for protecting industries and for ensuring a proper balance between the conflicting claims of national growth and control of pollution. The Acts provided for taking samples of effluents at emission levels. The Court said the results of the analysis were inadmissible in evidence before a court, if the sample was taken and analysis made without complying with the safeguards provided by the statute. This position, according to the court, led to the view that the statute was intended to protect industry. These observations were unnecessary and stand on a weak foundation. In reality, the aim of the special law is the protection of the environment from abuse by industrialists.

In *Krishna Panicker* v. *Appukuttan Nair*[99] the Division Bench of the Kerala High Court held that it is wrong to have presumed that the Water and Air Acts and Section 133 of the Code of Criminal Procedure, operate on the same field.[100] Special law overrides general law, only if, both operate on the same field. One relates to pollution control, the other refers to maintenance of public order and tranquility. Pushing the aggrieved citizens to the board does not bring effective results, as the board has to put itself in the position of a complainant and seek remedies before a judicial magistrate. The Code provides a mechanism for quick remedy against nuisance. Remedy under the law of public nuisance has now become feasible, functional and reachable to the common man.[101]

2.4.Conclusion

The cases studied under this Chapter enables us to understand that the right to clean air was acknowledged by the common law since long. However, the Common Law remedies for nuisance as applicable to cases of environmental pollution are not exhaustive and contain certain gaps, which

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[98] Supra note no. 96.
[99] Supra note no. 84.
[100] Id., at 729.
[101] Supra note no. 90 at 45-46.

have largely been filled by legislative remedies provided progressively over the past few years.

The concept of nuisance at present maintain certain objective standards of environmental quality based on modern ecological considerations, this requires more legislative and judicial activism.

The extent of the prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose, according to the Indian Easement Act should be restricted.

It is submitted that Section 28 (d) of the Indian Easement Act should be suitably amended and there should not be any statutory provision granting an acquisitive right by way of prescription to pollute air or water.

In case of noise pollution, physical damage affecting the health and the nervous system may enable a person to recover damages and injunction. We find that there have been a substantial amount of cases in this respect in India.

There have been cases where pollution of air has been accepted in India as amounting to nuisance.

The Common Law action for negligence may be brought to prevent environmental pollution. A major achievement made in *Donoghue* v. *Stevenson*[102] was that the fallacy of privity of contract was done away with by allowing the consumer to bring an action in tort against the manufacturer, with whom there was no privity of contract. In such cases, pecuniary compensation payable for the commission of the wrong may be either substantial or exemplary. While the former is for the purpose of restitution, the object of the latter is to deter the wrongdoer. The casual connection between the negligent act and the plaintiff's injury was often the most problematic link in pollution cases. The party seeking to recover compensation for damage had to prove that the party against whom he complained was in the wrong. If, eventually, the case was evenly weighed on both sides, and the court was not satisfied that it

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[102] Supra note no. 3.

was occasioned by the negligence or default of the other party, the action could not succeed.

In course of time, there were situations where a person was made liable for some harm, even though he was neither negligent in causing it, nor intending to do so. The liability recognized was strict liability from this principle the present concept of absolute liability evolved.

Therefore, the rule of strict liability in *Rylands* v. *Fletcher*[103] can very well be applied in cases of escape of dangerous substances causing pollution, as has been rightly observed by the Supreme Court in *M.C.Mehta* v. *Union of India*[104].

The Supreme Court had rightly observed in *Vellore Citizens Welfare Forum* v. *Union of India*[105]that the Constitutional and Statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right to clean environment.

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[103] Supra note no. 15.
[104] Supra note no. 24.
[105] AIR 1996 SC 2715.