



EAC-PM Working Paper Series

EAC-PM/WP/11/2023

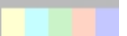
FAIR COMPENSATION AND ACCOUNTABILITY

Why India Needs Punitive Damages and Stronger Torts Law



Aditya Sinha & Bikashita Choudhury

March 2023



FAIR COMPENSATION AND ACCOUNTABILITY

Why India Needs Punitive Damages and Stronger Torts Law

Aditya Sinha & Bikashita Choudhury¹

1. Context

In 2014, a tragic incident occurred when an eleven-year-old girl drowned in the Teesta River due to the sudden release of water from an upstream dam. The High Court of Sikkim awarded the bereaved parents a compensation of Rs. 5 Lakhs, while the National Hydroelectric Power Corporation was found negligent in informing residents about the water release. Subsequently, instructions were issued to prevent such mishaps from recurring. However, in 2020, two individuals aged 27 and 11 lost their lives in a similar incident caused by the dam's sudden release of water, resulting in a higher compensation of Rs. 35 Lakh per victim. The court clarified that the higher compensation was due to the violation of previous guidelines, emphasising the importance of adhering to regulations to prevent such tragic events.

In cases involving disputes with the government, individuals can seek prompt relief through public interest litigation and writ petitions. However, obtaining similar relief can be expensive and time-consuming when it comes to private bodies such as corporations, companies, factories, start-ups, foreign branches, and food chains. Although some laws allow for cases to be registered against private bodies, the scope of these laws is limited and does not cover all forms of disasters or injuries.

In contrast, in China, a woman was held responsible for leaving her luggage unattended on a downward escalator, which caused it to fall and severely injure another woman. If a similar incident occurred in India, the standard practice would

¹ Aditya Sinha is Additional Private Secretary (Policy & Research), EAC-PM and Bikashita Choudhury is Young Professional, EAC-PM.

be to initiate a police complaint and criminal proceedings. However, Indian laws do not provide for compensation for personal injuries caused by one individual to another. This is an example of a tortious case where the perpetrator or wrongdoer is liable for monetary relief to the victim.

Although criminal cases can provide some form of justice for negligence, they may not be the proper forum for pursuing litigation in cases where the guilty intent of the individual is missing. In the case of the dam incident, for example, the corporation and government staffs were guilty of negligence but did not intend for anyone to die. In such cases, those government officers who acted on behalf of the government incur tortious liability. It is important to note that although the government may be responsible as an entity, individual officers may also be held accountable for their actions.

Tortious liability is different from that administrative and criminal liability. Criminal liability is determined by the Law of Crimes, which shall declare the punishment in due course. The departments would also handle administrative liability in some cases (the dam incident). Tortious liability, on the other hand, is the liability of the tortfeasor towards the injured / victim.² However, who adjudicates upon the injury and the suffering of the victim? This role is also delegated to the Constitutional, Criminal or Civil court. However, the sad reality is that in these courts (those dealing with large-scale tragedies which somehow involve some governmental department), the damages considered to compensate for the victim's injury are also a tertiary exercise. The tortfeasor's liability towards

² The concept of liability can be better understood with the help of an example: Let's say a student X cheats in an exam with the help of a peon Y who leaked papers. It is an annual exam where the question paper is set by a teacher W in School Z. Once the peon Y is caught, he is liable to compensate the damage suffered by all those students who were appearing in the exam along with X since they will have to retake the exam. Y is liable to answer the teacher W who will have to reset the paper. Finally, the liability of Y is also with the school Z which suffered a loss of reputation due to such untoward incident. It is a single wrongful act, but the number of people injured are many. The school can punish Y by firing him or by deducting his salary etc as he is an employer of the school. However, this punishment would not compensate the wrong suffered by the student or the teacher as their nature of injury or hurt is different as much as their relationship with Y. As much as one legislation cannot have all the forms of compensation or nature of liabilities, similarly one court cannot deal with all forms of liabilities under a single form of criminal or civil jurisdiction.

the individual³ generally is an added afterthought while the courts are too caught up to deal with the plethora of documents, witnesses, experts, testimonials, reports of the commissions. Now, suppose the tortfeasor is an individual and the wrong is such that it cannot be classified as a crime under any of the criminal legislations. In that case, one shall have to either give up the idea of any justice or will have to get into the murky waters of civil law and resort to highly complex litigations with a 50-50 chance of results. Punishment or not, one aspect which is largely ignored is that the victim can be injured in ways which can be beyond their means to be dealt with. In such instances, a monetary compensation is the most sought-after relief. The current legislation and the judicial set-up fail to provide immediate relief; in some cases, monetary relief does not exist.

2. The need for enshrining Punitive Damages in Law

Punitive damages are designed to punish the wrongdoer for their reckless or intentional actions and to deter others from behaving similarly in the future. In many countries, including the United States, punitive damages are a common component of lawsuits.

But in India, punitive damages are not a codified aspect of yet law. This means that victims of accidents or other harm caused by someone else's negligence or misconduct are often left without adequate compensation. This is not only unfair to the victims, but it also fails to hold wrongdoers accountable for their actions.

The main reason for such an apathy is that value of human life in India is not considered at par with those of other countries. We hardly have legislations and protections that consider the rights and betterment of a regular citizen. Also,

³ Ref. to Article 4 of the Tort Liability Law of the Peoples' Republic of China. As per this principle, the person who has caused the damage is directly liable to pay the compensation towards the victim.

a general lack of awareness among the people as to how to conduct themselves in day-to-day life complicates the situation further.⁴

Introducing punitive damages and expanding torts law in India would benefit individual victims and society as a whole. It would encourage people to behave more responsibly and with greater care for the safety and well-being of others. It would also provide a stronger deterrent against harmful actions, potentially reducing the number of accidents and injuries that occur.

Coming back to the case scenarios, had there been a codified torts law and an exemplary cost (hypothetically, 50 cr.) imposed upon the Power Corporation at the first instance, perhaps, the guidelines would have been implemented sooner, and no repetition of the tragedy would have occurred.⁵ Such a pecuniary cost would also stand out as an example to such corporations/companies so that they would also exercise the bare minimum caution required while running a business/profit concern. Imposing such damages upon an individual can also serve as a reminder of the rights and duties of an individual in society and deter many individuals from misbehaving in public.⁶

Such a form of exemplary damages is called ‘punitive damages’; a monetary fine in excess of actual damage.⁷ Punitive damages are aimed exclusively at the wrongdoer- his misdeeds, the negligent attitude and other factors. Punitive damages is also termed exemplary damages in some cases.⁸

⁴ From a developing country’s perspective which has a massive population, it is a general corollary that human’s worth would not be considered as important as that of a human in a developed country. This is in terms of availing cheap labour, having a population which is able to cater to the demand and supply chain etc. However, when this idea percolates into the societal structure when it comes to aspects of standard of living, sociology, sustenance, the situation takes a turn for the worse. Coupled with this understanding seeping into the minds of the people of India and backed by absence of proper legislation has created an atmosphere of hostility in India.

⁵ The total penalty which the corporation had to incur was 75 Lakh. Though a fund of 2 cr. was directed to be set-up, the money essentially would have remained with the corporation, even though blocked.

⁶ Spitting in roads, engaging in altercation in public, misbehaving with public servants and doctors etc

⁷ This is not to claim that a human life is worth less than 50 cr. The idea is that damages amount which is way too exorbitant for someone to pay without the same having any repercussions on the individual.

⁸ For the sake of convenience, the term punitive damages have been used consistently through the draft. Unless some verbatim quote which mentions exemplary damages, no substitution has been carried out.

As India's global importance continues to rise, it is imperative that legal protections for individuals' lives in the country are improved. With the influx of many large corporations establishing factories and other facilities in India, there is a potential for foreign nationals to take up residence there. It is crucial to be vigilant that the foreign corporations do not exploit the lack of personal laws protecting Indian citizens and ensure that foreign citizens, whether permanent or temporary residents are guaranteed the same quality of life. The idea of protecting an individual is not singular, as harm can also be caused to groups of people, and protection should be extended to all. To achieve this, it is proposed that a codified law of torts, which would provide necessary protections, be implemented. This note highlights the need for a codified torts law and provisions for punitive damages.

3. The History of Torts Law in India

Since the English did not follow a codified tort law system, they did not attempt to bring about a codification of the Indian torts system. The first Law Commission of 1835 was bestowed to codify several laws, including the law of torts. Subsequently, in 1886, the Indian Civil Wrongs Bill was developed, which was again abandoned.⁹ Even from 1914 to 1965, hardly had there been any cases.¹⁰ It is, therefore, simpler to recall a few famous cases which established the root of torts law in India. The first is the Bhopal Gas Tragedy Case, where the government sought compensation of 3.1 billion for the loss of lives but eventually had to settle for 420 million.¹¹ After that, the Uphaar Cinema Tragedy struck wherein the High Court of Delhi imposed exemplary damages of Rs. 2.5 Cr. However, the Supreme

⁹ Available at: <https://articlesonlaw.in/why-were-not-civil-wrongs-codified-in-india/>, Last Accessed: 6th February '23

¹⁰ Available at: <https://aishwaryasandeep.com/2022/01/12/tort-law-in-india-seriously-underdeveloped/>, Last Accessed: 6th February '23

¹¹ This is the infamous gas leak case where due to improper maintenance of the factory equipment of Union Carbide India Limited, a highly poisonous methyl isocyanide gas leaked into the atmosphere of Bhopal city killing more than 3000 people and injuring over 5 Lakhs. There had been previous reports of leaks in that factory resulting in death and frequent hospitalisation of its workers.

Court reduced the damages to 25 lakhs.¹² In 1986, a breakthrough happened. The Consumer Protection Act was established, and those who could be labelled as customers could now claim compensation under this Act without having to pay hefty court fees. Soon thereafter, medical malpractice was also brought under the ambit of this Act. One remarkable case under this Act was *Dr Kunal Saha vs The State of West Bengal*, where the initial compensation against the negligent death of Dr. Saha's wife was earmarked at Rs. 1.5 cr. by the National Commission and was eventually changed to Rs. 6.08 Cr.¹³ In this case, individual liabilities were also assigned to the doctors who were involved in the negligent conduct. This is perhaps the first case where the initial compensation amount was not only doubled but individual responsibilities were also laid down.

Though the last case does not refer to punitive damages, the same cannot be said to be short of anything similar. Nevertheless, a few inferences can be drawn from the three sets of cases: During the Bhopal Gas tragedy case, excessive scepticism was displayed regarding the capacity of the Indian legal system to deal with such a case. During this era, foreign investment had not yet gained a foothold in India, and therefore such a display of lack of faith did not cause much damage.¹⁴ However, in the years to follow, an innovative concept of 'absolute liability' was introduced in the Indian jurisprudence which however was reduced to a one-time principle with almost no effect in subsequent applications. In the absence of any proper formulation, there has been an excessive reliance on the criminal liability of the wrongdoers, because of which the Apex Court has consistently reduced the

¹² One of the worst tragedies to happen in India, during the screening of the movie *Border* at Uphaar Cinema at Green Park in Delhi. A fire had broken out in the year 1997 due to which 59 people died of asphyxiation and 103 were injured. A lot of safety measures that are considered essential for such halls were found to be missing at the cinema.

¹³ In this case, an Indian American couple had come to India for some time when the wife developed some skin problem. She visited AMRI in Kolkata where the doctor suggested rest. Due to persisting problem, the lady again visited the same doctor who suggested injection twice daily. Soon, her condition deteriorated, and she was shifted to Bombay where she died within a month of her disease. It was found to be a deadly skin disease and the doctor had prescribed a medical component whose amount would have been the most probable cause.

¹⁴ Though in the 21st century it is unfathomable that a similar distrust would be displayed regarding the Indian judiciary, India too would have faced fate like the African nations as well as Latin America where international corporations have wreaked havoc on the ecosystem and livelihood of several communities with no compensation or reparation of any kind.

punitive damages. There are provisions for motor vehicle cases, consumer and medical case victims to claim compensation.

In contrast, a different case which would not fall under any of the aforementioned categories would have to resort to the highly expensive and tedious civil suit for damages.¹⁵ On the Other hand, it is not uncommon to have speculation that in the case of Dr. Kunal Saha, a hefty revision of the penalty was carried out by the Supreme Court maybe because of his US connection. And maybe the same treatment would not have been meted, had the victim been an Indian with no such root?. Another remarkable observation is that the benefit of such punitive damages could not be obtained in mass claims but in a one-to-one case.¹⁶

The current set-up propagates the idea of 'Ex-gratia payments' where the government declares a lump sum compensation to victims of any form of tragedy or disaster, which in turn discourages fact-finding and establishing the actual wrong doer.¹⁷ This also sets in the form of complacency in the minds of a section of government employees who know that the government will compensate for their mistakes and defaults.¹⁸ Moreover, in some cases, government employees are bestowed with absolute and limited forms of immunities, making any form of legal proceedings, i.e., civil or criminal, almost impossible against them.¹⁹

¹⁵ In motor vehicles case, the court fee is to be given after the order is passed; while receiving copy of the same. Consumer cases have a fixed filing fee.

¹⁶ Second M.K. Nambyar Endowment Lecture 2014 on From Bhopal to Saha: The Elusive Promise of Effective Legal Remedy —Marc Galanter

¹⁷ In some cases, the compensation may not be lump sum and can be provided in different forms.

¹⁸ Though internal enquiries at times result in suspension / transfer or denial of promotion, that is the maximum level of punishment which they have to bear. At times the records are so murky and these files change so many hands that the government also gives up on internal enquiries.

¹⁹ An important example of the same would be the arrest of Congress leader Kaustav Bagchi in West Bengal who was arrested at 3 A.M. from his residence without even serving section 41A notice. The sections which he was charged with were mostly non-cognizable offences. The police was in clear violation of its powers but by virtue of discharging duties on behalf of the state becomes untouchable.

4. Issues surrounding Punitive Damages and the Law of Torts

There are primarily three issues with Punitive Damages and the Law of Torts in India, namely:

- (a) There is a motor vehicles tribunal for a motor accident claim, a consumer forum for medical malpractices and consumer complaints, and a constitutional court for constitutional torts. Isn't it necessary to have a proper forum for individual or other tortious cases mostly filed as civil suits?
- (b) In the absence of a codified Tort Law, myriad legislations attempt to codify the principles of torts and provide relief accordingly. In light of the development of society and technology, is there a need to introduce a codified tort law which would do away with the need to draft and amend multiple legislations?
- (c) Is it necessary to introduce a punitive damages component in Indian Laws or Tort Law as part of a better adjudication of relief in civil wrongs cases?

5. Discussion

Following the Bhopal Gas Tragedy, efforts were made to regulate cases of industrial and environmental disasters and the injuries they cause. As a result, the Public Liability Insurance Act was introduced, along with general insurance coverage under public liability industrial/non-industrial policies. Subsequently, additional Acts were introduced to provide compensation to victims suffering from various injuries.

While the Public Liability Insurance Act gives statutory protection to mainly industrial units dealing with hazardous substances and the other Acts extend protection to certain victims, the rest of the sectors fall under the general insurance scheme whose provision and cover vary from company to company. However, the standard insurance under the general insurance scheme primarily excludes

major covers such as pollution, product, food and beverages which have to be added separately (if provisions for the same exist) and punitive damages. Therefore, in cases where the insurance does not cover a certain section, hypothetically, the industry employees would mostly be left without any relief. It is not possible to maintain vigil over all these sectors. In India, where 80% of the workforce is engaged in the private sector, there is no opportunity for them to seek any relief in the absence of policy cover and tort law.

Thus, no relief can be extended to those who are not a consumer or accident victim per se. Also, with general insurance, any injury arising out of food and beverage, product etc, are not covered. Some examples of injury which do not fall under the scope of these acts and the insurance scheme include- actions on part of individuals entering areas which are restricted, taking pictures / making videos in restricted areas, rash public behaviour, inflicting injury on someone's pet, illegal billboards and illegal occupancy of public roads etc.²⁰ With the advent of technology, there has been a boom in small businesses, deepfakes and injurious trends which go viral.²¹ There have been instances of injury out of these cases which have not met with justice or compensation. The trend of destruction of property by masses, injury inflicted by police,²² frequent calls of strikes and subsequent damage have become very common since there are no proper laws to regulate these issues. Any action taken by the government also draws a flake from the judiciary since they are bound to interpret these incidents from the perspective of an offence and the legislation regulating the same. In these cases, either the penalty is minimum, the relief is non-existent, or the option is to start criminal proceedings based on a complaint.²³ There exist distinct groups of offenders, namely the affluent class who can afford to pay compensation of a few lakhs and continue to act recklessly, and habitual offenders who are desensitized to short

²⁰ These heads of wrong are categorised as intentional tort.

²¹ An example of such situation would be the tide pod challenge where teenagers were seen eating detergent pods which are highly dangerous.

²² Assault, illegal search and detention, excessive use of authority by police.

²³ For a complaint, unlike a FIR, to be registered and then to reach court in the form of a case can take at least a year.

prison terms and do not alter their behaviour. Additionally, due to the registration of many such cases as petty criminal offences rather than torts cases, the prisons and criminal justice system are strained, and the executive is not adequately invested in these matters.

These factors often deter the injured/ victim from initiating the due process of justice. As a result of which, a specific section of people believe that it is normal to get away with such roguish behaviour, which would otherwise draw severe penal actions in jurisdictions outside India. This gives rise to the habit of repeat offence among these individuals.

In case a codified form of torts law is in place with the provision of punitive damages, these issues can be taken care of. It is crucial to ensure that tortious liabilities are excluded from the scope of immunities to prevent government employees from abusing their authority by invoking such privileges.²⁴ Such a law would act as a deterrence since the compensation amount would be hefty, and the offender would be aware of the financial repercussions repeating of such an offence would incur. Since tort is essentially a civil action, it would take the burden off the criminal jurisdiction. Thus, the Torts law can not only be an instrument of social control, but it would also regulate the behaviour of public officials while making the public more aware of their duties and nature of the conduct.²⁵ In some cases, it is excessive to impose criminal liability, and therefore civil liability with the possibility of excessive damages can do away with the stigma and bring about vigilance in certain sectors.²⁶

²⁴ This can bring into check the roguish behaviour of the police in certain states and people can be made aware of the fact that the individual government employee rather than the department can also be charged and made liable to pay compensation.

²⁵ This can go a long way in making the society more courteous and change the mindset of the foreign countries who are not welcoming of Indians in their societies.

²⁶ One example would be that of the dog menace that is very common nowadays where owners do not exercise proper control on their pets who then injure others. These cases do not require any criminal punishment rather imposition of hefty damages etc. Another section would be that of the issue of companies that export products outside which have caused significant damages to the reputation of India's business ethics due to faulty and injurious quality of the products. Imposing criminal liability might deter business but an imposition of punitive damages can be a more effective means to both penalise and not deter people from venturing into such businesses.

6. Benefits

In the absence of codified tort law in India, courts often rely on judicial precedents and principles to decide cases. However, without a statute in place, the impact of such precedents is limited, and many individuals, including government officials and the police, tend to disregard court judgments. This lack of awareness and absence of codified law results in many cases of personal injury going unpursued. The *Kasturi Lal* case, which absolved the State of all liabilities in cases of injurious acts committed by government officials, has set a damaging precedent in the Indian legal system. Although subsequent court judgments have narrowed down this principle, a codified tort law presents an opportunity to abolish this archaic principle altogether. Despite recommendations from the Law Commission and a proposed government liability bill in 1965, the principle of ‘the king can do no wrong’ continues to be in force, underscoring the need for codified legislation to establish liability and ensure the protection of individuals’ rights.

There is a lack of uniformity among courts in dealing with various types of tort cases, including differences in a forum, categorisation of victims, and identification of tortfeasors. Many cases are classified as constitutional torts, as they offer an easier route for obtaining relief with fewer legal formalities. In these cases, also, the courts have lamented that in the absence of a statutory formula for the calculation of damages, the figures tend to vary greatly.²⁷ Resultingly, the

²⁷ To quote the judgement of the *Municipal Corporation of Delhi, Delhi vs. Association of Victims of Uphaar Tragedy and Ors.* “Law is well settled that a Constitutional Court can award monetary compensation against State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations. Quite often the courts have a difficult task in determining damages in various fact situations. The yardsticks normally adopted for determining the compensation payable in a private tort claims are not as such applicable when a constitutional court determines the compensation in cases where there is violation of fundamental rights guaranteed to its citizens. In *D.K. Basu v. Union of India*, a Constitution Bench of this Court held that there is no strait jacket formula for computation of damages and we find that there is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In *Rudal Shah's* case, this Court used the terminology "Palliative" for measuring the damages and The formula of "Ad hoc" was applied in *Sebastian Hongary's* case the expression used by this Court for determining the monetary compensation was "Exemplary" cost and the formula adopted was "Punitive". In *Bhim Singh's* case, the expression used by the Court was "Compensation" and method adopted was "Tortious formula". In *D.K. Basu v. Union of India* (supra) the expression used by this Court for determining the compensation was "Monetary Compensation". The formula adopted was "Cost to Cost" method. Courts have not, therefore, adopted a uniform criterion since no statutory formula has been laid down.”

component of compensation has been comparatively low.²⁸ The concept of punitive damages, though introduced in Consumer Protection Act, has been sparsely used.²⁹ Hence, it is not surprising that a significant proportion of compensation awarded by courts is consumed by litigation costs. Therefore, a codified version of tort law must establish specific guidelines for determining compensation in different types of tort cases. Such guidelines can be developed by analysing previous judgments and compiling a variety of compensation formulas. This approach would not only regulate the appropriate amount of compensation but also reduce reliance on ex-gratia payments from the government. The Supreme Court referred to the reports of two committees, the KT Thomas Committee and F S Nariman Committee, which thoroughly examined issues related to damages and torts. The F S Nariman Committee proposed standardised formulas for compensating punitive damages in cases of vandalism and rioting. This goes on to solidify the understanding that the Courts are also awaiting the introduction of formulated approach towards counting damages and are not averse to the concept of punitive damages either.³⁰

In cases of civil suits, where there are several victims, the inclusion of all of them makes a case murkier and warrants the further delay. Therefore, a common form of torts claim brought about under a 'class action suit' would be possible. These suits would help those cases where the number of victims is plenty, and there is no scope for filing a public interest litigation. For the time being, the absence of a proper system of class action suits has worked out to the advantage

²⁸ The Public Liability Insurance Act which had the compensation cap of few thousand rupees have not been revised since 1991.

²⁹ IN THE SUPREME COURT OF INDIA, Civil Appeal No. 5622 of 2019 (Arising out of SLP (C) No. 33720 of 2018)

Decided On: 01.10.2020, Magma Fincorp Ltd.Vs. Rajesh Kumar Tiwari, 01.10.2020: the same is only restricted to those circumstances where the act is so reprehensible that punishment is due.

³⁰ IN THE SUPREME COURT OF INDIA, Writ Petition (Civil) No. 330 of 2018 (Under Article 32 of the Constitution of India), Decided On: 01.10.2018, Kodungallur Film Society and Ors. Vs. Union of India (UOI) and Ors.

of several companies which zero down a few individuals and compensate them handsomely in cases of injuries while the rest of the victims are left in a lurch.

Another important aspect would be that the introduction of a codified torts law would help identify different classes of victims as well as the perpetrators. Cases of damage resulting from strikes and bandh, which are organised by parties often go unpunished. In such cases, the MLAs and MPs or other prominent leaders who organise such unrest can be identified under the codified laws. Also, individuals as agitators or instigators of riots can be labelled. These important issues the government has been grappling with that can be resolved by introducing a codified set of tort law. Furthermore, the concept of legal liability of an injurer is generally considered so rare that recovery from them is typically not treated as a factor of prevention.³¹ However, the imposition of both punitive damages and tortious liability under a codified statute can change that mindset as well.

7. Forum

It is imperative to establish a separate forum or designate a court to handle tort cases, despite tort being a form of civil wrong. The intricate nature of tort cases may necessitate the involvement of expert committees to conduct in-depth investigations, assess damages, and make proposals for injured parties. Judges with years of traditional practice may develop a tunnel vision and may not be suitable to handle tort cases, as it requires a different skill set and expertise. The tendency of judges to award minimal damages is not ideal, and experienced individuals with knowledge of the relevant issues should be appointed to handle such cases. The traditional Civil Court procedure may not be suitable for tort cases, as it may take too long to reach a settlement. Any delay in compensation may render it ineffective in providing support for families, medical treatment, or similar needs.

³¹ Second M.K. Nambyar Endowment Lecture 2014 on From Bhopal to Saha: The Elusive Promise of Effective Legal Remedy —Marc Galanter

8. International scope

China, in 2009 codified the Torts Liability law, which is highly comprehensive and covers a variety of subjects for which India has multiple legislations. France also has a codified torts law in force. Issues like discrimination, sporting injuries, public transport accidents etc were codified in Australia in the year 2002 under the Civil Liabilities Act. In fact, the Law Commission of Australia has also opined that exemplary damages should be retained where the defendant “had deliberately and outrageously disregarded the plaintiffs’ rights.”³² Even the privy council of England has stated that the concept of punitive damages in tortious cases has a vitality and has thus far been able to reject various shackles that England has tried to impose on it.³³

9. Precautions

It is, however, to be kept in mind that policies relating to punitive torts law must be uniform to a large extent, except for the possibility of capping and uncapping of damages. There should be no attempt to compare the scope of punitive damages to that of compensatory damages. As much as the accused should not get a free pass, instances, where the accused is an individual, must not be equated to those cases where the perpetrator is a body corporate. To deal with this issue, an excessive fine clause can be considered. Genuine cases of mistake or accident should not be equated with cases of wilful negligence, intention to harm or moral delinquency. Since several legislations are already in place which deals with similar cases of injury or personal wrong, it should be ensured that the codified law of torts is rather complementary and not a new set of legislation which sets out to nullify the other acts already in force.

³² IN THE SUPREME COURT OF INDIA, CRIMINAL ORIGINAL JURISDICTION, WRIT PETITION (Crl.) NO. 77 OF 2007, In Re: Destruction of Public & Private Properties Versus State of A.P. and Ors.

³³ The Cleaner Co Ltd. Vs. Abrahams [2004] AC 628, pg. 54

10. Conclusion

Since the 19th century, there have been numerous debates on the system of punitive damages in torts jurisdiction worldwide. Although some initially argued for the abolition of punitive damages, most jurisdictions have retained them with caps imposed in certain states and countries. In contrast, some countries have codified their torts law to ensure that any form of wrongdoing, no matter how minor or major, does not escape justice.

In India, the multi-faceted aspect of liability for tortious acts has been overlooked. Tort is not just a criminal wrong but also a civil wrong, and neither criminal nor constitutional courts can assess civil liability. Although India has enacted subject-specific legislation and imposed damages and penalties, there is a steady flow of cases claiming tortious liability that is not covered by these laws. Therefore, it is appropriate for a civil court to adjudicate these cases as they involve a civil wrong. However, initiating a torts case before a civil court in India can be daunting as every case is unique, and different courts have given varying opinions on such cases. This situation creates a quagmire for the victim and the counsel at the mercy of the judge's whims and fancies.

It is worth noting that tortious acts primarily affect the lives of middle-class individuals in India, such as those who would go for a swim in the local rivers or work in factories. These incidents do not usually involve the wealthy in society. Most of the Indian population belongs to the middle class, and they keep society running. Thus, the lack of laws and a gruelling civil court system that forces victims to struggle to achieve justice after suffering an injury breaks their spirit. To protect this class of individuals, it is time for India to bring about protective measures, such as codifying the law of torts, similar to other nations. A codified law of torts would eliminate the need to keep developing new legislation each time a new form of injury or violation occurs. It would also prevent a repetition of denying adequate relief to victims, as happened in the Bhopal gas tragedy.