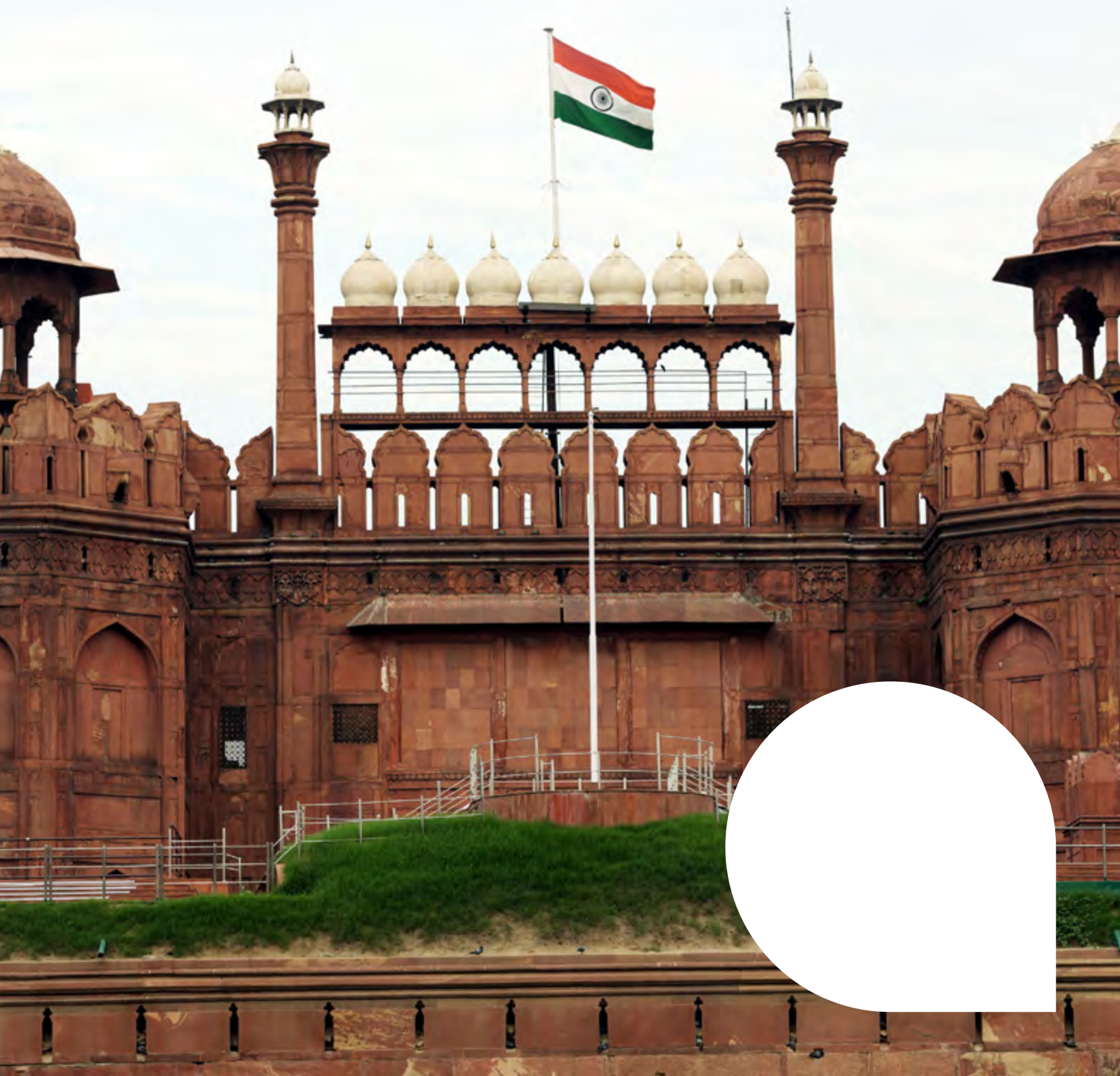


A HANDBOOK FOR PRACTITIONERS | INDIA

Civil Liability for Human Rights Violations



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FREQUENTLY USED ABBREVIATIONS

NHRC	National Human Rights Commission
SHRC	State Human Rights Commission
PIL	Public Interest Litigation
CPCB	Central Pollution Control Board
SPCB	State Pollution Control Board
NGT	National Green Tribunal
CPC	Code of Civil Procedure, 1908
IPC	Indian Penal Code, 1860
SRA	Specific Relief Act, 1963
CrPC	Code of Criminal Procedure, 1973

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INDIA



4

A jurisdiction of paradoxes, the legal framework in India presents a contrasting picture that is both a progressive, liberal, pro-poor, and rights-friendly regime, but also, one that is affected by longstanding structural issues involving delays, the pendency of cases, complex procedural rules, and poor enforcement. The Indian Constitution provides a robust structure of fundamental rights and constitutional remedies, including the directive principles of state policy to enforce fundamental rights within the jurisdiction. The Indian Supreme Court's interventions to develop constitutional torts offer a key avenue to make monetary compensation for human rights violations possible. At the same time, an underdeveloped body of tort law creates a lacuna in the availability of civil remedies. This gap is filled, to an extent, by a vast statutory and regulatory framework that has codified civil remedies within its ambit. These three distinct forms of civil remedy present valuable opportunities for litigants seeking to pursue civil claims for human rights violations, but the structural challenges mentioned above present obstacles for them as well.

INDICES

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66/100

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85/180

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The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



CIVIL LIABILITY FOR HUMAN RIGHTS VIOLATIONS

Introduction

1. India is a quasi-federal, common-law jurisdiction with an adversarial dispute resolution system which offers several routes for claims for civil remedies for human rights violations.
2. India's primary human rights protections and obligations stem from Part III of the [Constitution of India](#) (the Constitution). Fundamental rights are constitutionally entrenched and they cover a wide spectrum of civil and political rights, including the right to equality; the right to non-discrimination on grounds of religion, race, caste, sex, or place of birth; the right to equality of opportunity; the abolition of untouchability; the right to freedom of speech and expression; freedom of assembly; freedom to form associations; freedom of movement; freedom of profession, occupation, trade or business; protection against arbitrary and excessive punishment; the right to life and personal liberty; protection against arbitrary arrest and detention; the right against exploitation; the right to freedom of religion; the protection of the interests of minorities; and the right to constitutional remedies.
3. India has also ratified several international human rights conventions,¹ including the International Covenant on Civil and Political Rights; the International Convention on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of Persons with Disabilities; and the Optional Protocols to the Convention on the Rights of the Child. However, in stark contrast, India has not ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention against Torture; the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty; the Convention for the Protection of All Persons from Enforced Disappearance; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.²

¹ United Nations Human Rights Treaty Bodies, ['Ratification Status for India'](#) (OHCHR).

² *ibid.*

4. As a dualist system, international law is not automatically incorporated within India's domestic legal system; an Act of Parliament is necessary for implementing any treaty, agreement or convention under international law into domestic law.³ However, the Supreme Court of India (Supreme Court) has held that 'international conventions and norms are to be read into (fundamental rights) in the absence of enacted domestic law occupying the field when there is no inconsistency between them'.⁴
5. A jurisdiction of seemingly infinite paradoxes,⁵ the legal framework in India presents a contrasting picture that is both a progressive, liberal, pro-poor, rights friendly regime, but also one that is marred by longstanding structural issues involving delays, pendency of cases, complex procedural rules, and poor enforcement. Against this background, this report outlines the key features of the Indian legal system and highlights how civil remedies can be sought for human rights violations.

3 [Art 253](#) of the Constitution reads: 'Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'.

4 *Vishaka v State of Rajasthan*, (1997) 6 SCC 241. See also, Aparna Chandra, 'India and International Law: Formal Dualism, Functional Monism' (2017) 57 Indian Journal of International Law 25; and Prabhaskar Ranjan, '[How India Has Approached Customary International Law](#)' (*Indian Express*, 11 January 2022).

5 Zachary Holladay, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19(2) Indiana Journal of Global Legal Studies 555.



General Questions



Q1

Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

6. Claims can be brought under the law of civil remedies against public bodies, corporations and individuals. There are three distinct routes for civil remedies: under constitutional law, statutory law, and under tort law. Depending on the route, the forum that is petitioned has different powers of remedial intervention.⁶ Under the **constitutional law** route, the Supreme Court or any of the High Courts can exercise their writ jurisdiction under [article 32](#) and [article 226](#) of the Constitution to enforce the fundamental rights enshrined under Part III of the Constitution.⁷ Under the **statutory law** route, a complaint can be either filed with a statutory body such as the National Human Rights Commission (NHRC) or a State Human Rights Commission (SHRC), or specialised courts and tribunals (such as the National Green Tribunal, Labour Courts or the Industrial Tribunal) can be petitioned. Under the **tort law** route, claims will lie with civil courts or district courts on the basis of subject matter, and on the basis of territorial, pecuniary and appellate jurisdiction.
7. The Indian judicial system is a single integrated system.⁸ Judicial pronouncements by the Supreme Court are binding precedents on all courts, judicial authorities, and tribunals in India. All appeals from civil courts and tribunals usually lie with the concerned High Court, but in the case of certain specialised tribunals, these lie directly with the Supreme Court. Under [article 136](#) of the Constitution, the Supreme Court can also, in its discretion, grant special leave to appeal any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal within the territory of India.
8. The *nature* of the right that forms the basis of the civil claim will also determine the remedial intervention, procedure and the appropriate forum that will be petitioned. The three defined harms dealt with in this report are (a) assault or unlawful arrest and detention of persons; (b) environmental harm; and (c) harmful or unfair labour conditions. While each of the defined harms are instances of violation of fundamental rights (especially the right to life and personal liberty under [article 21](#)), the claimant's right can also stem from statute or common law.
9. The Constitution also provides for protection against the three defined harms under the Directive Principles of State Policy (Directive Principles). Although the Directive Principles are not justiciable per se, they play a critical role in lending context to the judicial interpretation of fundamental rights. Key provisions for environmental rights include [article 48A](#), which requires the State to protect and

⁶ Mary Kozlovski, 'A Brief Introduction to the Indian Judicial System and Court Hierarchy' (2019) Briefing Paper 12 University of Melbourne: Asian Law Centre 2.

⁷ [Art 32](#) of the Constitution reads: '(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, *including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part'. (author's emphasis). Similarly, [art 226\(1\)](#) of the Constitution reads: 'Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warrant, and certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.'

⁸ See also Ashish Bhan and Mohit Rohatgi, 'Legal Systems in India: Overview' (Thomson Reuters Practical Law, 1 March 2021); and Anupama Hebbar, Pritha Sri Kumar Iyer and Sita Kapadia, 'Litigation and Enforcement in India: Overview' (Thomson Reuters Practical Law, 1 April 2021).

improve the environment and to safeguard the forests and wildlife of the country,⁹ and [article 51A\(g\)](#), which places a duty on every citizen of the country to protect and improve the environment.¹⁰ Some of the key fundamental rights for labour and employment conditions under the Constitution include [article 16](#), which mandates equal opportunity for all citizens in matters relating to employment and prohibits discrimination on any grounds in respect of employment; [article 23](#), which prohibits human trafficking and forced labour; and [article 24](#), which prohibits child labour. Provisions within the Directive Principles include [article 39](#), which provides for the right to an adequate means of livelihood and for equal pay for equal work; [article 42](#), which provides for just and humane conditions of work and maternity relief; [article 43](#), which provides for living wage for workers, and [article 43A](#), which provides for participation of workers in management of industries.

Constitutional law: constitutional torts as civil remedies

10. Rights-based litigation under Indian constitutional law comprises the mainstay of human rights litigation in India. Since the 1980s, the Supreme Court has consistently expanded the extent of the Constitution's protections for various fundamental rights. This expansion of protection did not occur in isolation. Rather, the combined effects of multiple legal, social, political and institutional factors prompted the courts to play a proactive role in filling in the regulatory gaps in fundamental rights litigation.¹¹ These developments – both substantial and procedural – have expanded the scope of rights that are now recognised as falling within fundamental rights; the types of remedial intervention at the courts' disposal; the degree of accessibility; and the extent to which fundamental rights are made enforceable.

Horizontal application of fundamental rights

11. One of the key expansions in fundamental rights litigation in India has been in the development of the horizontal application of fundamental rights under the Constitution.¹² Traditionally, as a general rule, constitutional rights have regulated the relationship between an individual and the State and are enforceable vertically against the State. But the horizontal application of fundamental rights makes constitutional rights enforceable against private parties. The Supreme Court, by liberally interpreting article 12 of the Constitution and by expanding the nature of obligations upon the State to protect fundamental rights,¹³ has extended the application of fundamental rights to private actors as well as to entities that are an extension of the State – that is, entities that are an agency or instrumentality of the State.
12. Instances where the Supreme Court has enforced a horizontal application of fundamental rights include:

⁹ [Art 37](#) of the Constitution reads: 'The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.'

¹⁰ Note, however, that fundamental duties are *not* enforceable. See Express News Service, '[Explained: What are the Fundamental Duties of India's Citizens?](#)' (*Indian Express*, 23 February 2022).

¹¹ Surya Deva, 'India: Constitutional Torts "Ruling the Roost"?' in Ekaterina Aristova and Uglješa Grušić (eds), *Civil Remedies and Human Rights in Flux: Key Legal Developments in Selected Jurisdictions* (Hart Publishing, 2022) 210.

¹² Gautam Bhatia, '[Horizontality under the Indian Constitution: A Schema](#)' (*Indian Constitutional Law and Philosophy Blog*, 24 May 2015). See also Stephen Gardbaum, 'Horizontal Effect' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016).

¹³ [Art 12](#) of the Constitution reads: 'In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and Legislature of each of the States and all local or other authorities (author's emphasis) within the territory of India or under the control of the Government of India.'

- a. cases against private parties where the *private* act was classified as an act of the State;
 - b. cases against the State to require the State to regulate private parties to enforce a fundamental right; and
 - c. cases against private parties where the private act is challenged on constitutional grounds.
13. In instances relating to para [12](a), the Supreme Court has held that cases where private bodies in their structure or function are so closely connected to the State that they qualify as '*other authorities*' under [article 12](#), such private bodies can be equated with the State for the purposes of enforcement of fundamental rights. The threshold of qualification is established through the *control test* or the *function test*. In the former, the court looks at the extent to which a private actor is under the functional, financial, or administrative control or domination of the State;¹⁴ in the latter, the Court looks at whether the function of the private actor lies in the nature of duties and functions of the State.¹⁵
14. In instances covered by para [12](b), the Supreme Court has sought to cast a positive obligation on the State to regulate private actors to enforce fundamental rights. For instance, in *Vishakha v State of Rajasthan*,¹⁶ the Court held that the State's failure to pass sexual harassment legislation to regulate public and private workplaces had resulted in the violation of a petitioner's rights under [article 14](#) (Right to Equality), [article 19](#) (Freedom of Speech and Expression) and [article 21](#) (Right to Life and Personal Liberty) of the Constitution. The Court stepped into the shoes of the State and issued the *Vishakha* guidelines to act as temporary guidelines until legislation was passed. In doing so, the Court brought private actors under the ambit of the State's purview, through an enforcement of fundamental rights.
15. Instances covered by para [12](c) include cases brought in terms of [article 15](#) (Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth), [article 17](#) (Abolition of Untouchability), and articles 23 and 24 where the Constitution specifically prohibits horizontal rights violations. This was seen in *People's Union for Democratic Rights v Union of India* where the Court held that the import of article 24 (and also articles 21, 17 and 23 of the Constitution) is wide and unlimited.¹⁷ The ruling was significant in its implications for forced labour in whatever form it is manifested, whether by private actors or by the State and its agencies. Similarly, in *Consumer Education and Research Centre v Union of India*, the Court noted that '[t]he State, be it Union or state government, or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness' under article 21's right to life, especially in context of the right to health and environment.¹⁸
16. As a result, the expansion of the notion of 'State' in article 12 implies that while all fundamental rights can be enforced against the State and all public sector companies, fundamental rights that are expressly horizontal in their application

14 *Pradeep Kumar Biswas v Indian Institute of Chemical Engineering* (2002) 5 SCC 111.

15 *BCCI v Cricket Association of Bihar* (2015) 3 SCC 351 [33].

16 *Vishakha* (n 4).

17 *People's Union for Democratic Rights v Union of India* AIR 1982 SC 1473.

18 *Consumer Education and Research Centre v Union of India* (1995) 3 SCC 42.

or have been judicially interpreted to be horizontal in application, can also be enforced against private actors.¹⁹

Locus standi and monetary compensation

17. Further expansions in fundamental rights litigation in India came with the relaxation of standing rules under the constitutional courts' writ jurisdiction and the judicial development of the doctrine of constitutional torts. Under the rubric of public interest litigation (PIL), the Supreme Court, in the early 1980s, sought to relax the requirement of locus standi to allow third parties to petition the Court's plenary jurisdiction under article 32 in any way or form for relief.²⁰ Consequently, the Supreme Court has also interpreted its powers to allow it to consider *suo motu*, thereby eliminating any requirement for standing or even the need for a case to arise as necessary prerequisites of its writ jurisdiction.²¹
18. Along with the relaxation of standing rules, the Supreme Court also expanded the nature of remedies that could be awarded in fundamental rights litigation. In addition to the writ remedies that were already available under article 32, the Supreme Court expanded its ambit to also award monetary compensation for violations of fundamental rights. One of the earliest cases where monetary compensation was awarded was in *Rudul Sah v State of Bihar*. In this case concerning the unlawful detention of the victim for fourteen years in prison after he had been acquitted in court, the Supreme Court held that there was a necessity to award remedies that could offer a 'palliative' for victims in certain instances of fundamental rights violations in a way that other remedies could not.²²
19. This was also seen in *Bandhua Mukti Morcha v Union of India* (a case concerning bonded child labour) where the Supreme Court emphasised the scope and extent of its remedial powers and observed that its writ jurisdiction does not merely confer power to issue a direction, order or writ for the enforcement of fundamental rights, but it also lays a *constitutional obligation* on the Court to protect the fundamental rights of the people and for that purpose it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.²³ As a result, the monetary compensation that came to be awarded under the constitutional tort model had both compensatory and punitive or exemplary elements to it. The compensation awarded in this case was in recognition of negligent State action or omission that had resulted in a violation of the claimant's fundamental rights. In *Rudul Sah*, for instance, an award of INR 30,000 (~USD 369) was made in 1983.
20. Constitutional tort actions have become a key route to civil remedies for human rights violations in India. While earlier cases of constitutional tort actions had involved deliberate or intentional State action (such as in cases of unlawful detention²⁴ and torture of prisoners²⁵), the Supreme Court has also extended liability to situations to where the State has *omitted* to take any action.²⁶

19 Deva (n 11).

20 Shyamkrishna Balganesh, 'The Constitutionalization of Indian Private Law' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 686.

21 *ibid.*

22 *Rudul Sah v State of Bihar* (1983) 4 SCC 141.

23 *Bandhua Mukti Morcha v Union of India* 1984 AIR 802.

24 *Bhim Singh v State of Jammu & Kashmir* (1984) Supp SCC 504; *Sebastian M Hongray v Union of India* (1984) 1 SCC 339.

25 *Nilabati Behera v State of Orissa* (1993) 2 SCC 746; *Khatris v State of Bihar* 1981 SCC 1 627.

26 *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37.

Moreover, the Court has extended the ambit of constitutional tort actions to cases of private individuals acting in a private capacity, if they have violated the victims' fundamental rights.²⁷

Substantive expansion of Article 21

21. Following *Rudul Sah* which expanded the remedies available under article 32, constitutional tort cases involving custodial violence and unlawful arrest and detention saw monetary compensation commonly awarded to the victim. While cases of assault, unlawful arrest or unlawful detention of persons already fell squarely within the ambit of article 21, the availability of a monetary remedy for these violations added a new dimension to the constitutional tort cases. For instance, in *Sebastian Hongray v Union of India*,²⁸ the Supreme Court awarded exemplary damages in light of the failure of the writ of *habeas corpus* to produce the bodies of two persons who were unlawfully detained by army personnel in Manipur. Damages of INR 100,000 each (~USD 1,229) were awarded to the victims' families.
22. In *Bhim Singh v State of Jammu and Kashmir*, the Supreme Court awarded INR 50,000 (~USD 615) to the victim for unlawful detention, whilst noting malicious intent and mischief on the part of the State in detaining the victim. In *Nilabati Behera v State of Orissa*, which involved the death of the victim in police custody, the Supreme Court highlighted the distinction between the liability in tort and the constitutional liability of the State for violating the victim's fundamental rights that merited an added obligation on the courts to adequately remedy the violation.²⁹ In *Nilabati Behera*, the victim's mother was awarded INR 150,000 (~USD 1,843).
23. One of the key developments in constitutional torts arose from cases concerning environmental harm. Here the confluence of tort law principles within the remit of fundamental rights adjudication under the courts' writ jurisdiction has resulted in a complex, developed environmental rights jurisprudence. Article 21 has been interpreted by the Supreme Court to be not limited to a mere animal existence;³⁰ rather, it includes the right to a pollution-free environment as well.³¹ For instance, in *T Damodar Rao v SO Municipal Corporation, Hyderabad*, the Andhra Pradesh High Court held that environmental pollution would be a violation of the fundamental right to life and personal liberty under article 21.³²
24. The Supreme Court has also routinely incorporated and developed the doctrines concerning the 'polluter pays' principle;³³ the 'precautionary principle';³⁴ 'sustainable development';³⁵ the 'doctrine of trust'³⁶ and 'intergenerational equity'³⁷ within article 21 of the Constitution to incorporate the right to environment.

²⁷ *Chairman, Railway Board v Chandrima Das* (2000) 2 SCC 465.

²⁸ *Sebastian Hongray* (n 24).

²⁹ *Nilabati Behera* (n 25).

³⁰ *Kharak Singh v State of Uttar Pradesh* (1964) 1 SCR 232, and *Francis Coralie Mullin v The Administrator, Union of India* 1981 AIR 746.

³¹ *Subhash Kumar v State of Bihar* AIR 1991 SC 420.

³² *T Damodar Rao v SO Municipal Corporation, Hyderabad* AIR 1987 AP 171 (Andhra Pradesh High Court).

³³ *Indian Council for Enviro-Legal Action v Union of India* 1996 AIR 1446.

³⁴ *Vellore Citizen Welfare Forum v Union of India* (1996) 5 SCR 241. The Supreme Court noted that the precautionary principle has three conditions: first, the State and statutory authorities must anticipate, prevent and attack the causes of environmental degradation; second, where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; third, the onus of proof is on the actor, developer or industrialist to show that the actions are environmentally benign.

³⁵ *ibid*. The Supreme Court also held that remediation of the damaged environment is part of sustainable development and that as such, the polluter is liable to pay the cost to the individual victims of a damaged environment as well as for the cost of reversing the damaged ecology.

³⁶ *MC Mehta v Kamal Nath* (1997) 1 SCC 388. The Supreme Court noted that: 'The State is the trustee of all natural resources which are, by nature, meant for public use and enjoyment. The public at large is the beneficiary of the sea, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.'

³⁷ *Goa Foundation v Union of India* (2014) 6 SCC 590. The Supreme Court held that the four principles of intergenerational equity, sustainable development, precautionary principle and polluter pays principle – are a part of article 21 of the Constitution. See also Rahul Basu, 'Intergenerational Equity Case Study: Iron-Ore Mining in Goa' (2017) 11(5) *Economic and Political Weekly* 18.

For instance, in *Indian Council for Enviro-Legal Action v Union of India*, the Supreme Court applied the ‘polluter pays’ principle to find the private chemical manufacturing plant absolutely liable for the damage caused to the environment and liable to compensate the victim population.³⁸ The Court held that the responsibility for creating the hazardous situation, and therefore for repairing the damage, was squarely on the chemical manufacturing plant. The final compensation amount that was to be paid by the company (after 15 years of non-compliance) was INR 37.385 crores (~USD 4,59 million), including compounded interest from the date of the original judgement, plus costs up to INR 10 lakhs (~USD 12,288).³⁹

25. Similarly, in *MC Mehta v Union of India (Oleum gas leak case)*,⁴⁰ the Court determined the standard of ‘absolute liability’ to apply in cases of hazardous or inherently dangerous activities, without exceptions. It also held that the quantum of compensation to be awarded in such cases of absolute liability will inevitably depend on the ‘magnitude and capacity of the enterprise’ in order to have a deterrent effect.⁴¹
26. In another *MC Mehta v Union of India (Tanneries case)*,⁴² the Supreme Court ordered the closure of 30 tanneries which had failed to undertake the minimum steps that were required for the primary treatment of industrial effluents. In *MC Mehta v Union of India (Ganga pollution case)*,⁴³ the Supreme Court once again expanded the interpretation of article 21 (in the context of articles 48A and 51A(g)) and issued injunctive orders against polluters of the river Ganga.⁴⁴
27. The Supreme Court has also recognised the right to livelihood as a critical component of article 21. For instance, in *Olga Tellis v Bombay Municipal Corporation*, the Court observed that if the right to livelihood is not treated as a part of article 21, then the easiest way to deprive a person of their right under article 21 would be to deprive them of their livelihood. In *People’s Union for Democratic Rights v Union of India*,⁴⁵ concerning deplorable employment conditions of child labour, the Supreme Court noted that forced labour, in whatever form it may manifest, would violate articles 24 and 23, as well as article 21. In this, the Court held that article 21 also includes the right to live with human dignity, especially in the context of dignity of livelihood and employment conditions. The Court widely interpreted ‘force’ to hold that labour that is supplied as a result of force or compulsion falls squarely within the definition of forced labour, regardless of whether or not a contract was entered into or if remuneration was being paid or not.⁴⁶
28. In *Bandhua Mukti Morcha*, the Supreme Court further contextualised bonded labour and observed that labour conditions need to be read in the context of the power dynamics between the labourer and their employer.⁴⁷ The duty to protect the health and safety of workers is equally applicable to the State and to private industries.⁴⁸

³⁸ *Indian Council for Enviro-Legal Action* (n 33).

³⁹ *ibid.*

⁴⁰ *MC Mehta v Union of India* (1987) 1 SCR 819 (*Oleum gas leak case*).

⁴¹ *ibid.*

⁴² *MC Mehta v Union of India* (1987) 4 SCC 463 (*Tanneries case*).

⁴³ *MC Mehta v Union of India* (1988) 1 SCC 471 (*Ganga pollution case*).

⁴⁴ See also *Susetha v State of Tamil Nadu* (2006) 6 SCC 543 (which held that the right to water is closely tied to the right to a quality life under article 21); *Andhra Pradesh Pollution Control Board v MV Nayudu* (1999) 2 SCC 718 (which held that environmental rights can be traced back to article 21).

⁴⁵ *People’s Union for Democratic Rights* (n 17).

⁴⁶ *ibid.* See also, Gautam Bhatia, ‘[Equal Freedom and Forced Labour](#)’ (*The Hindu*, 12 May 2020).

⁴⁷ *Bandhua Mukti Morcha* (n 23).

⁴⁸ *Kirloskar Brother Ltd v Employees’ State Insurance Corporation* (1996) 2 SCC 682.

29. The combined effect of (a) a liberal interpretation of 'State'; (b) the horizontal application of fundamental rights (c) a substantive expansion of article 21; and (d) the judicial creation of monetary remedies has meant that constitutional courts are routinely petitioned as a forum for civil remedies for human rights violations claims against the State, private actors and individuals. It is important to note that although the nature of the remedy that is awarded is compensatory and monetary, it does not preclude the claimant from also approaching the civil courts under tort law as a parallel, alternative, or complementary forum for civil remedies for human rights violations.⁴⁹

Statutory provisions

30. There is no single, unified legislation in India that provides for civil liability of the State, individuals, or corporations for human rights violations.⁵⁰ In the specific context of the defined harms, the claimant can approach civil courts or special tribunals as set up under different statutes, to seek limited civil remedies.
31. In terms of statutory bodies, the **National Human Rights Commission** is a key statutory institution that is responsible for human rights compliance in India.⁵¹ Established under the [Protection of Human Rights Act, 1993](#), the NHRC is a recommendatory body. The reports of the Commission are placed before Parliament and action is accordingly taken by the Government. The NHRC has the power to inquire into violations of both civil and political rights, and economic, social and cultural rights. It has the power to inquire, *suo motu* or on a petition presented to it by a victim or any person on behalf of the victim, or on a direction or order of any court, into a complaint of a violation of human rights or its abetment.⁵² It also has the power to inquire into a complaint of negligence in the prevention of such violation by a public servant.⁵³ It can intervene in any proceeding in a court that involves any allegation of violation of human rights.⁵⁴ It can visit any institution that is under the control of a state government (such as prisons or jails) to take account of the living conditions of inmates;⁵⁵ it can review constitutional safeguards and provisions that seek to protect human rights, and it can recommend measures for effective implementation;⁵⁶ and it can review factors that inhibit an effective enjoyment of human rights⁵⁷.
32. In terms of NHRC's powers of inquiry, it has all the powers that a civil court has under the Code of Civil Procedure 1908 to inquire into any complaint of a human right violation that is made.⁵⁸ In particular, the NHRC can summon and enforce attendance of witnesses, and examine them on oath;⁵⁹ it can enforce discovery

49 *ibid.*

50 Deva (n 11) 205.

51 Monthly statistics for [May 2022](#) noted that 8,348 cases were registered, 9,212 cases were disposed, and 14,410 cases were pending. Combined monetary relief up to INR 4,200,000 (~USD 51,609) was recommended in 13 cases of human rights violations.

52 [S 12\(a\)](#) of the Protection of Human Rights Act, 1993. See also, Operational Guidelines, '[How to File an Online Complaint](#)' (NHRC). The complaint procedure requires details of the complainant, victim(s), the incident, and the nature of relief that is sought. Complaints can also be filed [online](#) on the NHRC website.

53 *ibid.*

54 *ibid* s 12(b).

55 *ibid* s 12(c).

56 *ibid* s 12(d).

57 *ibid* s 12(e).

58 *ibid* s 13(1).

59 *ibid* s 13(1)(a).

and production of any document;⁶⁰ it can receive evidence on affidavits;⁶¹ it can requisition any public record or copy from any court or office;⁶² and it can determine commissions to be set up for examination of witnesses or documents.⁶³ NHRC also has the power to require any person, subject to any privilege, to furnish information on issues that the NHRC considers useful, relevant or subject to any inquiry.⁶⁴ It can also make use of the services of any officer or agency under the central or state government during an investigation of a complaint.⁶⁵

33. In terms of remedial intervention, the NHRC has the power to recommend compensation or damages or interim relief⁶⁶ to the complainant or to the victim or to their family.⁶⁷ It can also recommend prosecution of public servants who are found guilty of human rights violations and also for abetment of violations and negligence in the prevention of such violations.⁶⁸

SPOTLIGHT: REMEDIAL INTERVENTION BY THE NHRC

Examples of successful remedial intervention include the NHRC's investigation of the [Nandigram violence in 2007](#). The violence arose from the clashes between the state government and organised protesters who were against the acquisition of their land for the construction of a chemical factory that was to be specifically set up within a special economic zone.⁶⁹ While some protesters died due to indiscriminate police shooting, many were injured and some were also raped.⁷⁰ Amongst other structural recommendations, the NHRC recommended that the next of kin of the deceased were to be treated as being among those who were injured, and be awarded compensation of around INR 500,000 (~USD 6,144)⁷¹ for each of the families of those who died in the shooting; compensation of INR 200,000 (~USD 2,459) for each of the women who were raped;⁷² INR 100,000 each (~USD 1,229) for each of the victims who were injured in the shooting;⁷³ and compensation ranging from INR 20,000 to INR 6,000 (~USD 246 to USD 74) for damage sustained to any property.⁷⁴

34. The NHRC has also sought to highlight the [prevalence of silicosis](#) in specific industries where it has noted deplorable conditions of labour, especially in construction, glass manufacture, mining, tunnelling, stone work and sand blasting.

60 *ibid* s 13(1)(b).

61 *ibid* s 13(1)(c).

62 *ibid* s 13(1)(d).

63 *ibid* s 13(1)(e).

64 *ibid* s 13(2).

65 *ibid* s 14(1).

66 *ibid* s 18(c).

67 *ibid* s 18(a).

68 *ibid* s 18(a)(ii).

69 NHRC Press Release, '[Some Important Interventions of NHRC](#)' (NHRC, 21 August 2008).

70 *ibid*.

71 *ibid*.

72 HT Correspondent, '[Compensation Paid to Nandigram Firing Victims](#)' (*Hindustan Times*, 31 December 2007).

73 *ibid*.

74 NHRC Press Release, '[Commission's 12-point Recommendations on Nandigram Violence](#)' (NHRC).

Among other key recommendations, the NHRC recommended monetary compensation for victims, along with other preventative, rehabilitative and remedial measures, including medical relief.

35. However, the NHRC is a curious structure. Despite having wide powers of inquiry, investigation and remedial intervention, the NHRC has often been labelled a 'toothless tiger'.⁷⁵ Criticisms levelled against the NHRC range from the limits to its remedial intervention and its lack of independence from the government⁷⁶, to structural issues that severely impede its functioning.⁷⁷ The NHRC can only make recommendations to government, with no room for appeal if these, including recommendations concerning the award of remedies, are not taken up.⁷⁸

Environmental harm

36. The key statutes and rules that regulate environmental laws are: [Water \(Prevention and Control of Pollution\) Act, 1974](#), the [Air \(Prevention and Control of Pollution\) Act, 1981](#), the [Environment \(Protection\) Act, 1986](#), the [E-Waste \(Management\) Rules, 2016 \(amended in 2018\)](#), the [Batteries \(Management & Handling\) Rules, 2001](#), the [Bio-Medical Waste Management Rules, 2016](#), the [Plastic Waste Management Rules, 2016](#), the [Solid Waste Management Rules, 2016](#), the [Construction and Demolition Waste Management Rules, 2016](#), the [Hazardous and Other Waste \(Management and Transboundary Movement\) Rules, 2016 \(amended in 2019\)](#), the [Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989](#), the [Environment Impact Assessment Notification, 2006](#), the [Wildlife \(Protection\) Act, 1972](#), the [Forest \(Conservation\) Act, 1980](#), the [Public Liability Insurance Act, 1991](#), the [Biological Diversity Act, 2002](#) and the [National Green Tribunal Act, 2010](#).
37. The key regulatory authorities for enforcing environmental rights and protections are the **Central Pollution Control Board (CPCB)**, the **State Pollution Control Boards (SPCBs)**, the **National Green Tribunal (NGT)**,⁷⁹ the High Courts and the Supreme Court. While each statute has a different schema of penalties and liability provisions for defaulting private actors and individuals, monetary compensation for environmental harms can be imposed by the regulatory bodies, the National Green Tribunal and the courts.
38. The CPCB, for instance, computes environmental compensation that is to be levied on a defaulting industry. The formula is calculated on the basis of the anticipated severity of pollution (in terms of the pollution index), the duration of violation (number of days), the scale of the operation (in terms of micro/small/medium/large industry), and the location (in terms of proximity to large habitation).⁸⁰
39. Similarly, the NGT as well as the High Courts and the Supreme Court can award compensation in instances of environmental harms. The NGT has jurisdiction

75 Gargi Verma, 'Need More Power to become a 'Toothful' Tiger: NHRC Chief HL Dattu' (*Indian Express*, 14 February 2020). See also, Apurva Vishwanath, 'NHRC Turns 25 – And That's Pretty Much All It Has Achieved' (*The Print*, 16 October 2018) and Jade Lyngdoh, 'The Tiger That Lost Its Teeth' (*The Telegraph*, 21 December 2021).

76 Sania Abbasi, 'For an Already Diminished NHRC, Justice Mishra's Appointment Spells Further Doom' (*The Wire*, 6 June 2021).

77 R Venkataraman, 'NHRC Has Been Reduced to a Toothless Tiger: Supreme Court Points Out the Loopholes' (*Catch News*, 17 July 2017) and Gautam Bhatia, 'Giving Human Rights Commissions More Teeth' (*The Hindu*, 14 April 2021).

78 Verma (n 75).

79 The National Green Tribunal was set up by the [National Green Tribunal Act, 2010](#) for the 'effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment, and giving relief and compensation for damages to person and property and for matters connected therewith or incidental thereto.'

80 Els Reynaers Kini and Gautambala Nandeshwar, 'Environmental Law and Practice in India: Overview' (*Thomson Reuters Practical Law*, 1 December 2021). For more on the calculation of environmental compensation, see Tavinderpal Sidhu and Kshitez Kaushik, 'India: Formula to Compute Environmental Compensation' (*Mondaq*, 14 January 2020). Calculated environmental compensation ranges from INR 5,000 to INR 10,000,000 (~USD 62 to ~USD 122,923,500).

over all civil cases that entail a substantial question related to the environment⁸¹ (including enforcement of any legal right relating to the environment)⁸² or any cause of action that arises out of the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002.

40. The NGT can order (a) relief and compensation to the victims of pollution and other environmental damage; (b) restitution for property damaged; and (c) restitution of the environment.⁸³ Any compensation awarded by the NGT⁸⁴ will be in addition to any relief that the claimant can get under the Public Liability Insurance Act, 1991.⁸⁵ Codified under [section 91](#) of the Code of Civil Procedure, 1908 (CPC) as public nuisance, the common law tort of nuisance also offers a legal basis for civil remedies for environmental harm.

Harmful or unfair labour conditions

41. Depending on the type of industry, nature of work undertaken, number of employees, location of the industry, and workplace conditions of the employees, different statutes for labour law can be accessed by a claimant seeking civil remedies under that statute. Statutes include the [Industrial Disputes Act, 1947](#), the [Trade Unions Act, 1926](#), the [Minimum Wages Act, 1948](#), the [Payment of Wages Act, 1936](#), the [Payment of Bonus Act, 1965](#); the Labour Welfare Fund Acts (of respective states), the [Factories Act, 1948](#), the [Industrial Employment \(Standing Orders\) Act, 1946](#), the Shops and Commercial Establishments Act (of respective states), the [Contract Labour \(Regulation and Abolition\) Act, 1970](#), the [Inter-State Migrant Workmen \(Regulation of Employment and Conditions of Service\) Act, 1979](#), the [Plantation Labour Act, 1951](#), the [Mines Act, 1952](#), the [Dock Workers \(Safety, Health & Welfare\) Act, 1986](#), the [Equal Remuneration Act, 1976](#), the [Bonded Labour System \(Abolition\) Act, 1976](#), the [Child and Adolescent Labour \(Prohibition & Regulation\) Act, 1986](#), the [Beedi and Cigar Workers \(Conditions of Employment\) Act, 1966](#), the [Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013](#) and the [Apprentices Act, 1961](#).
42. Within the organised sector, the main social security legislation includes the [Employees Compensation Act, 1923](#) (for accidents during the course of employment), the [Employees State Insurance Act, 1948](#) (for health benefits), the [Maternity Benefit Act, 1961](#), the [Payment of Gratuity Act, 1972](#) and the [Employees Provident Fund Act, 1952](#) (for retirement benefits). Since 2020, the Government of India has consolidated individual statutes into four distinct labour codes: [Code on Wages, 2019](#), the [Code on Social Security, 2020](#), the [Occupational Safety, Health and Working Conditions Code, 2020](#) and the [Industrial Relations Code, 2020](#). To date, the new labour codes have not yet been implemented.

81 [S.2\(m\)](#) of the National Green Tribunal Act, 2010 reads: 'Substantial question relating to environment' shall include an instance where – (i) there is a direct violation of a specific statutory environmental obligation by a person by which – (a) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or (b) the gravity of damage to the environment or property is substantial; or (c) the damage to public health is broadly measurable; and (ii) the environmental consequences relate to a specific activity or a point source of pollution.

82 *ibid* s 14(1).

83 *ibid* s 15(1).

84 For NGT's formula for compensation see, *Paryavaran Suraksha Samiti v Union of India* (28 August 2019, National Green Tribunal – Principal Bench, New Delhi). For the heads under which the NGT can grant compensation or the heads under which damage may be claimed, see National Green Tribunal Act, 2010, [sch.II](#).

85 [S.15\(2\)](#) of the National Green Tribunal.

43. The primary judicial bodies and agencies that can hear claims pertaining to labour law include the Supreme Court; the High Courts; labour courts, industrial tribunals and the National Tribunal (for adjudicating labour disputes); the regional or the chief labour commissioner (for enforcing provisions in relation to payment of salaries, gratuities, contract labour, employee compensation and working conditions among other things); the Directorate of Factories (for enforcing provisions relating to health and safety in factories); the Provident Fund Commissioner (for enforcing issues in relation to the Provident Fund); and the chairperson of the Employees' State Insurance Corporation (for enforcing provisions related to employees' state insurance among other things).
44. In terms of available statutory monetary remedies, [section 3](#) of the Employees Compensation Act, 1923 mandates that the employer is liable to pay compensation to the employee if they suffer personal injury or certain occupational diseases as a result of accidents arising out of or in the course of employment. This provision also notes that if an employee contracts an occupational disease that is peculiar to that employment, and if the disease has arisen out of and in the course of their employment, the contracting of such occupational disease will be deemed to be to be an 'injury by accident' under the Workmen's Compensation Act, and will merit compensation accordingly.⁸⁶ Similarly, [section 1A](#) of the Fatal Accidents Act, 1855, provides another legal basis for compensation to the family of a person who has died, for loss due to their death by an actionable wrong.

Tort law

45. The third route for a claimant to seek civil remedy in India is through tort law. Based on principles developed by common law and statutory instruments, the law of torts administered in India today is the English law, as is found suitable to Indian conditions. While decisions of the English courts are not binding upon Indian courts, they continue to have persuasive authority.
46. Tort law principles are supplemented with codified, specialised liability regimes for civil redress mechanisms for the specific context of activities that commonly produce accidental harm to life and property.⁸⁷ Examples of such specialised codes include the [Motor Vehicles Act, 1988](#) for compensation for motor vehicle accidents (the Motor Vehicles Act is also often used to calculate compensation for victims of custodial deaths and custodial violence),⁸⁸ the [Employees Compensation Act, 1923](#) for compensation for workplace injuries, and the liability provisions of the [Railways Claims Tribunal Act, 1987](#) and the [Consumer Protection Act, 2019](#) that deals with products (and services) liability.

SPOTLIGHT: EVOLUTION OF ABSOLUTE LIABILITY IN BHOPAL GAS TRAGEDY

On the night of 2 December 1984, over 40 tons of highly noxious gases, including methyl isocyanate escaped from a storage tank in a pesticide manufacturing plant of Union Carbide India Limited, a subsidiary of the Union Carbide Corporation.⁸⁹ The toxic gases engulfed the densely populated city of Bhopal in India and resulted in one of the worst industrial catastrophes in modern times.

⁸⁶ *ibid* s 3(2).

⁸⁷ Balganes (n 20).

⁸⁸ See Usha Ramanathan, 'Tort Law in India' (2001) Annual Survey of Indian Law 615; and Mohamed Imranullah S, 'Kin of Custodial Torture Victim Get INR 30 Lakh' (*The Hindu*, 7 September 2019).

⁸⁹ FP Staff, 'Bhopal Gas Tragedy: Remembering India's Worst Industrial Disaster as Victims Still Await Justice' (*Firstpost*, 3 December 2021).

Over 3,000 people were killed instantly, and over 20,000 people have died since then as a result of their exposure to the gases in the immediate aftermath.⁹⁰ An estimated 574,000 people were poisoned that night, with many more being grievously injured, suffering from total, partial, temporary or permanent disability with instances of prolonged pain, cancer, stillbirths, miscarriages, and lung and heart diseases.⁹¹ The consequences also extended to severe impacts on the environment and on animal life.

Against the backdrop of the disastrous Bhopal Gas Tragedy, as it came to be known (see para [61]), the principle of absolute liability emerged to ensure that enterprises engaging in inherently dangerous industries do not evade liability. The rule of absolute liability, a key tort law principle, is now applied by courts to extend strict liability to enterprises engaging in hazardous activities. Unlike strict liability, there are no defences permitted under absolute liability. The distinction between strict and absolute liability is also reflected in the quantum of damages that can be awarded to the claimants – while under the strict liability principle, damages are compensatory; absolute liability cases, as in the *Oleum gas leak* case, are awarded with exemplary damages.⁹²

47. The codification of only some aspects of tort law into specialised liability regimes has created a disjointed and underdeveloped body of law that often lacks doctrinal coherence.⁹³ Due to several institutional and structural factors, there continues to be a great paucity of tort litigation in India.⁹⁴

Q2

What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

48. To seek monetary compensation under constitutional law, the claimant has to file a writ petition in a High Court or the Supreme Court, establishing their case that their fundamental rights are affected or violated by the action of any State or government authority or body. The claimant's petition has to present the facts of their case, the questions of law, and the nature of writ or remedy that is sought.⁹⁵ If the case concerns a larger public interest, a public interest litigation petition can be filed.⁹⁶ In case of a public interest litigation, there is no defined format for a petition. A letter to the Supreme Court would also be considered to be a petition.⁹⁷

90 Hannah Ellis-Petersen, '[Bhopal's Tragedy Has Not Stopped: The Urban Disaster Still Claiming Lives 35 Years On](#)' (*The Guardian*, 8 December 2019).

91 *ibid.*

92 Surya Deva, '[Background Paper for India's National Framework on Business and Human Rights](#)' (Ethical Trading Initiative 2016) 27.

93 See R Ramamoorthy, 'Difficulties of Tort Litigants in India' (1970) 12(2) *Journal of the Indian Law Institute* 313.

94 CM Abraham and Sushila Abraham, 'The Bhopal Case and the Development of Environmental Law in India' (1991) 40(2) *International and Comparative Law Quarterly* 334, 354. Marc Galanter, 'Legal Torpor: Why So Little Has Happened in India after the Bhopal Tragedy' (1985) 20(2) *Texas International Law Journal* 273.

95 The format of a Writ Petition can be found [here](#).

96 Akshatha M, '[A Guide to Filing a Public Interest Litigation \(PIL\)](#)' (*Citizen Matters*, 2 August 2017).

97 *Bandhua Mukti Morcha* (n 23). The Court observed that the framers of the Constitution deliberately did not lay down any particular form for enforcing fundamental rights, nor did they stipulate that any proceedings should conform to any rigid patterns or straight-jacket formula, in the context of the socioeconomic realities of India, where poverty, ignorance, illiteracy, deprivation and exploitation are pervasively present. As such, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self-defeating because it would place enforcement of rights beyond the reach of the common man. See also SCO Team, '[More Frequent Use of Suo Motu Petitions?](#)' (*Supreme Court Observer*, 24 March 2020).

49. The Supreme Court has also released [guidelines](#) for the nature of cases that would be categorised as public interest litigation. The categories include (but are not limited to): (1) bonded labour; (2) neglected children; (3) non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws; (4) petitions from jails complaining of harassment, seeking premature release/parole, seeking release, concerning custodial death, transfer from prisons, release on personal bond and speedy trials as a fundamental right; (5) petitions against police for refusing to register a case, harassment by police and death in police custody; (6) petitions from persons belonging to Scheduled Caste and Scheduled Tribes and economically disadvantaged classes complaining of harassment or torture of villagers by co-villagers or by police; (7) petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance; and (8) riot victims.
50. To seek civil remedies under statutory or tort law, and unless there is a specific statutory procedure to seek relief, a plaint has to be instituted under the CPC. The plaint shall include inter alia: (a) the name of the court in which the suit is brought; (b) the name, description and place of residence of the claimant; (c) the name, description and place of residence of the defendant, so far as they can be ascertained; (d) the facts constituting the cause of action and when it arose; (e) the facts showing that the court has jurisdiction; and (f) the relief that the claimant claims.⁹⁸ Every plaint has to specifically state the relief that the claimant claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just, to the same extent as if it had been asked for.⁹⁹
51. Under principles of tort law, to establish **negligence** the claimant has to establish that the defendant party was negligent. In that, the initial burden of proof is on the claimant who has to establish a prima facie case against the defendant.¹⁰⁰ The claimant has to prove that the defendant owed a duty of care; that the defendant breached the said duty; and that the claimant suffered the damage as a consequence thereof. However, direct evidence of the negligence is not necessary; this can also be inferred from the circumstances of the case, provided that the claimant has established a prima facie case, either by direct or circumstantial evidence, that the defendant was negligent.¹⁰¹
52. To establish **battery** as an intentional tort, the claimant has to establish that (i) there was use of force; and (ii) that the force was used without any lawful justification. Here, the amount of force used is not relevant.¹⁰² Even if the force used is trivial and it does not cause any physical hurt or damage, the wrong is still constituted.¹⁰³ This also includes force that is used without bodily contact or with use of a secondary object. Passive obstruction will not constitute a use of force. Furthermore, the force used should be intentional and without any lawful justification. Unintentional harm or harm caused by accident will not constitute battery.¹⁰⁴ Similarly, voluntarily suffered harm will not constitute battery.¹⁰⁵ Battery is also a criminal offence under [section 350](#) of the Indian Penal Code, 1860 (IPC) as criminal force.

⁹⁸ See [Order VII, Rule 1](#) of the CPC.

⁹⁹ *ibid* [Order VII, Rule 7](#).

¹⁰⁰ Ramesh K Bangia, *Law of Torts*, 21st edn (Allahabad Law Agency 2008) 275.

¹⁰¹ *ibid*.

¹⁰² *ibid* 153.

¹⁰³ *ibid*.

¹⁰⁴ *ibid* 154.

¹⁰⁵ *ibid*.

53. To establish **assault** as an intentional tort, the claimant has to establish that there was a reasonable apprehension of infliction of battery to the claimant by the defendant.¹⁰⁶ In this, the wrong comprises an attempt to do the harm, rather than the harm in itself. The test is whether an apprehension has been created in the mind of the claimant that they will be inflicted with battery. Verbal threat would not amount to assault, unless it creates reasonable apprehension in the claimant's mind that immediate force will follow.¹⁰⁷ Another element to establish assault is that the defendant should have a prima facie ability to do the harm. Assault is also a criminal offence under [section 351](#) of the IPC.
54. To establish **false imprisonment** as an intentional tort, the claimant has to establish that there was total restraint of the claimant's liberty.¹⁰⁸ To constitute the tort of false imprisonment, the claimant has to be completely deprived of his liberty to move beyond certain limits.¹⁰⁹ If the restraint is only partial or if there are reasonable means of escape, then the wrong would not be constituted. Here, the duration of the restraint is irrelevant. The restraint also does not necessarily have to be confined within four walls of a building. However, if the claimant has voluntarily put themselves in a situation in which they are restrained, the defendant would not be liable. To refute the claim, the defendant must establish that there was lawful justification for the claimant's detention.¹¹⁰ Wrongful confinement is also a criminal offence under [section 340](#) of the IPC.
55. To establish a tort of **nuisance**, the claimant has to establish (i) unreasonable interference; (ii) interference with the use or enjoyment of land; and (iii) damage.¹¹¹ An act, which is otherwise reasonable, will not be deemed as unreasonable interference solely due to the sensitivity of the claimant.¹¹² Furthermore, interference with the use or enjoyment of land can be established by either showing (i) injury to the property itself; or (ii) injury to the comfort or health of the occupants of the property.¹¹³ For the latter, it must be a substantial interference to the comfort and convenience of the occupants.¹¹⁴ Finally, there has to be actual damage as a result of the nuisance.¹¹⁵ Nuisance is also a criminal offence under [section 268](#) of the IPC, as public nuisance.

Q3

Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

56. In terms of liability for the conduct of third parties, the concept of **vicarious liability** is recognised under tort law. When an agent commits a tort in the course of performance of their duty as an agent, the principal will be vicariously liable

¹⁰⁶ *ibid* 155.

¹⁰⁷ *ibid*.

¹⁰⁸ *ibid* 157.

¹⁰⁹ *ibid* 158.

¹¹⁰ *ibid* 162.

¹¹¹ *ibid* 198.

¹¹² *ibid* 200.

¹¹³ *ibid* 203.

¹¹⁴ *ibid* 207.

¹¹⁵ *ibid* 208.

for the tort, on the basis of the existing **principal-agent** relationship.¹¹⁶ Both, the agent and the principal can be held liable for the same cause of action. They will be considered joint tortfeasors and their liability will be joint and several.¹¹⁷ However, the employer is not liable for the acts of an independent contractor, except if (a) the employer has authorised the doing of an illegal act, or has subsequently ratified the act; or (b) in cases of absolute liability, such as in the case of extra-hazardous work which has been entrusted to an independent contractor. In these exceptions, the employer becomes a party to the wrongful act, and therefore will be held liable as a joint tortfeasor.¹¹⁸

57. **Joint and several liability** will also apply in the case of a **master-agent** relationship or in the case of partnership, where the wrongful act is done by one partner in the course of business.¹¹⁹ The principle of vicarious liability is also recognised under constitutional torts where the State is vicariously held liable for the tortious acts of its employees in the course of their employment.¹²⁰
58. Furthermore, courts in India do not follow any distinction between joint and independent tortfeasors. Thus, if two or more persons are responsible for a common or single damage, regardless of whether they were acting independently or jointly, but in furtherance of a common design, they are termed **composite tortfeasors** and their liability is joint and several.¹²¹ The judgment against composite tortfeasors is usually for a single sum, without any apportionment of liability or damages in accordance to the fault of the various tortfeasors.¹²²

Q4

When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

59. The extent to which a parent company can be held liable under the law of civil remedies for the wrongful acts or omissions of its subsidiaries or contractors in a supply chain is limited in India.
60. Although narrow in scope and limited only to corporations that are engaged in hazardous or inherently dangerous industries, India has recognised a form of **enterprise liability** that treats all companies in a group as a single enterprise and holds the single enterprise responsible for harm caused by any individual company within the group. This negates the idea of separate legal personality of any single entity within the group and allows for the parent company to be held liable for the wrongful acts and omissions of its subsidiaries. In the aftermath of the Bhopal Gas Tragedy, where the gas leak by the Bhopal plant of Union Carbide India Limited was the action of the subsidiary of an American parent company Union Carbide, the Indian government argued that a multinational enterprise should 'necessarily assume responsibility' for the harm caused by it, especially given the scale of damage caused, and the difference in asset holding between the subsidiary and the parent company.

¹¹⁶ Ramesh K Bangia, *Law of Torts*, 23rd edn (Allahabad Law Agency 2013) 76.

¹¹⁷ *ibid.*

¹¹⁸ Bangia, (n 100) 93.

¹¹⁹ *ibid.*

¹²⁰ See *Chandrima Das* (n 27); *Shyam Sunder v State of Rajasthan* AIR 1974 SC 890; and *Nilabati Behera* (n 25).

¹²¹ Bangia, (n 100) 69.

¹²² *ibid* 349.

61. In response, and consequently in the *Oleum gas leak* case, the Supreme Court observed and adopted a theory of enterprise liability. The Court noted two issues: first, the damages to be paid should be proportional not just to the size of the harm, but also to the size of the enterprise that committed that harm, in order to have a deterrent effect. Second, in cases of hazardous industries, the entire economic unit or enterprise that controlled the plant could be held liable. The Court stated:

*'We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons ... owes an absolute and non-delegable duty to the community that no harm results to any one on account of the dangerous nature of the activity it has undertaken ... If the enterprise is permitted to carry on the hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident.'*¹²³

SPOTLIGHT: UNION CARBIDE CORPORATION V UNION OF INDIA

In *Union Carbide Corporation v Union of India*,¹²⁴ the Madhya Pradesh High Court cited the *Oleum gas leak* case while inquiring whether Union Carbide Corporation (Union Carbide) was liable for the actions of its subsidiary, Union Carbide India Limited.¹²⁵ Union Carbide argued that it was only a shareholder and that it did not exercise control over any action of its subsidiary, which owned and operated the Bhopal plant. Union Carbide also argued that the corporate veil could not be pierced unless it was found that 'the corporation had been set up to evade or defraud the government revenue or shareholders.'¹²⁶ In response, the Court held that the scope of limited liability and piercing of the corporate veil had to adapt to economic changes in the modern world, and especially so in a case of 'a mass disaster and in which on the face of it the assets of the alleged subsidiary company are utterly insufficient to meet the just claims of multitude of disaster victims.'¹²⁷ The Court noted that it was irrelevant to inquire into whether Union Carbide actively managed the affairs of its subsidiaries. Majority-share ownership meant that Union Carbide not only controlled the composition of the Board of Directors of the Indian subsidiary, but it also had full control over the management of the Indian subsidiary – and that in itself satisfied the doctrine of enterprise liability as was stated in the *Oleum gas leak* case.

62. In *Indian Council for Enviro-Legal Action* as well, the Supreme Court stressed the need to contextualise the doctrine of enterprise liability, taking account of the costs and challenges of rapid economic growth and industrialisation.¹²⁸ This line

¹²³ *Oleum gas leak* case (n 40).

¹²⁴ *Union Carbide Corporation v Union of India*, Civil Revision No 26 (1988) (Madhya Pradesh High Court).

¹²⁵ *ibid* 373-375.

¹²⁶ *ibid* 349.

¹²⁷ *ibid* 379. See also, Abhi Raghunathan, 'The Grand Trunk Road from *Salomon* to *Mehta*: Economic Development and Enterprise Liability in India' (2012) 100(2) *Georgetown Law Journal* 571.

¹²⁸ See also *Indian Council for Enviro-Legal Action* (n 33).

of reasoning on enterprise liability was further expanded in *State of Uttar Pradesh v Renuagar*,¹²⁹ where the Supreme Court observed the need to look at piercing the corporate veil in the context of the economic reality of the situation instead of assuming the formal, legal reality of the parent-subsidary relationship.¹³⁰ Consequently, the Supreme Court has held that 'the corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest'¹³¹ and the corporate veil can be pierced 'to get behind the smoke-screen and discover the true state of affairs'.¹³²

Q5

What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

63. The most commonly sought remedy for victims of the three defined harms through constitutional litigation is monetary compensation for a constitutional tort violation of the victim's fundamental rights, or an award of a writ remedy, or a combination of both. Under articles 32 and 226 of the Constitution, the Supreme Court and the High Courts have the power to issue directions or orders or writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate for the enforcement of any of the fundamental rights.
64. The Supreme Court and the High Courts can also seek to remedy fundamental rights violations through a continuing *mandamus* or a structural interdict or a structural injunction. In other words, the court will provide relief to the claimant through a series of ongoing orders for the defendant to comply with. Continuing *mandamus*, as a remedy, is usually awarded in cases of structural violations that require the court to monitor compliance, seek periodic reports and ensure implementation of its orders by the relevant authorities. It is routinely observed in cases of environmental harm such as in *Indian Council for Enviro-Legal Action v Union of India* (concerning pollution caused by chemical industrial plants),¹³³ *Delhi Vehicular Pollution Case* (concerning air pollution in Delhi and surrounding regions),¹³⁴ and *TN Godavaraman v Union of India* (concerning deforestation of the Nilgiris forests).¹³⁵
65. Damages awarded by the courts under tort law principles can be 'substantial' or exemplary. While **substantial damages** are aimed at compensating victims, **exemplary damages** are intended to have a deterrent effect. In the *Oleum gas leak* case, the Supreme Court noted that in order to measure the quantum of compensation payable by a company involved in hazardous or inherently dangerous activities, the compensation 'must be correlated to the magnitude and capacity of the enterprise' in order to have a deterrent effect.¹³⁶

129 *State of Uttar Pradesh v Renuagar* (1988) 1 SCR 627.

130 See also *Delhi Development Authority v Skipper Construction Co (P) Ltd* (1996) 4 SCC 622; *Pushpanjali Farm Owners and Residents Association v Ansal Properties and Industries Ltd* 2012 (3) CPC 290 (National Consumer Disputes Redressal Commission); *State of Rajasthan v Gotan Lime Stone Khanji Udyog* (2016) 4 SCC 469.

131 *Kapila Hingorani v State of Bihar* (2003) 6 SCC 1 [27].

132 *Workmen Employed v Associated Rubber Industry Ltd* (1985) 4 SCC 114 [3]-[5].

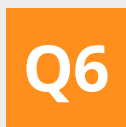
133 *Indian Council for Enviro-Legal Action* (n 33).

134 *MC Mehta v Union of India* AIR 2002 SC 1696.

135 *TN Godavaraman v Union of India* (1996) 9 SCC 982.

136 *Oleum gas leak case* (n 40).

66. In addition to compensation, civil courts may also issue **temporary injunctions** or **interlocutory orders** as under [Order XXXIX](#) of the CPC; **permanent or perpetual injunctions** under [section 37](#) and [section 38](#) of the [Specific Relief Act, 1963](#) (SRA); a **mandatory injunction** under [section 39](#) of the SRA; or a **declaratory order** under [section 34](#) of the SRA.
67. Section 37 of the SRA provides that temporary injunction can continue until a specified time, or until further orders by the court. Temporary injunctions may be granted at any stage of a suit, and are regulated by the CPC. In contrast, **perpetual injunctions** can only be granted by the decree made at the hearing on the merits of the suit. A perpetual injunction, under section 38 of the SRA, prevents the defendant from asserting a right or from committing an act that would be contrary to the rights of the plaintiff. Under section 39, mandatory injunctions can compel any party to a claim to perform any requisite act that the court is capable of enforcing in order to prevent the breach of an obligation. Finally, under section 34 of the SRA, a court can also grant declaratory orders as to the status or the rights of the plaintiff.



What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

68. The hybrid constitutional tort claim, which combines a tort claim against a State or private actor to enforce fundamental rights, has become a mainstay of civil remedies for fundamental rights violations in India. When juxtaposed against the conventional tort law route for civil remedies, the **advantages** that can be observed are: (a) constitutional tort claims have a relatively expedited litigation process and are therefore cost effective; (b) claims are less formal with greatly accessible institutional rules for bringing the claim; (c) since the constitutional courts' writ jurisdiction is being petitioned, it does not require an elaborate factual record – instead, the claim can be disposed of based on the evidence presented in the affidavit without any need for the court to require further testimony;¹³⁷ and (d) the scope of remedial intervention by the courts is varied and wide under the ambit of articles 32 and 226 of the Constitution.
69. On the other hand, the **disadvantages** of bringing civil claims as a means of human rights protection in India remain closely connected to the structural issues that plague the legal system. A number of issues continue to deter a successful enforcement of rights including severe pendency of cases,¹³⁸ increasing legal costs and expenses to bring a claim; complex procedures and formalities; sluggish progress of claims;¹³⁹ a limited number of judges; and a top-heavy justice system where lower courts are routinely bypassed in favour of the constitutional courts' appellate and original jurisdictions.¹⁴⁰ The current system of civil remedies through constitutional tort litigation comes with procedural, normative and institutional

137 *Association of Victims of Uphaar Tragedy v Union of India* (2003) 2 ACC 114 (Delhi High Court).

138 Jyotika Sood, 'Pendency in Indian Courts Rising by 2.8% Annually: Report by Delhi-based Non-Profit' (*Outlook*, 20 October 2021).

139 Akshat Jaithalia and Aayush Maheshwari, 'The Agonizing Pace of the Indian Judiciary' (*Jurist*, 14 May 2020).

140 Nick Robinson, 'Top-heavy Justice' (*Indian Express*, 17 December 2012). See also, Robert Moog, 'Delays in the Indian Courts: Why the Judges Don't Take Control' (1992) 16(1) *Justice System Journal* 19.

costs,¹⁴¹ which in turn further exacerbate the existing structural difficulties in the Indian legal system. The system also lacks a legal and normative framework for monetary compensation.¹⁴² The quantum of compensation awarded varies drastically from case to case and from court to court, despite having similar fact patterns. Moreover, the compensation amount is itself generally paltry and limited, with costs of litigation often far exceeding the award itself. Inevitably, the occurrence of the three defined harms thus remains an endemic reality for India.¹⁴³

Q7

Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

70. Civil claims can be brought against a foreign defendant in India, as long as the requirements for invoking the jurisdiction of a court under the CPC are met. The CPC notes that where a suit is for compensation for a wrong done to the claimant or to movable property, the suit is to be instituted within the local limits of the petitioned court's jurisdiction; or the place where the defendant resides, carries on business or personally works for gain.¹⁴⁴ For immoveable property, the appropriate court would be that within which the immoveable property is situated.¹⁴⁵
71. While the sovereignty of foreign defendants, especially foreign state-owned entities, is generally recognised, an exception is carved out under [section 86\(1\)](#) of the CPC. It states that no foreign state or entity may be sued in any court that would otherwise be competent to hear the suit, except with the prior consent of the central government. Such consent from the central government can be given with respect to a specific suit, or to several specified suits or with respect to all suits of any specified class or classes. [Section 86\(2\)](#) also notes that such consent will not be given unless it appears that (a) the foreign State or entity has itself instituted a suit in the court against the person desiring to sue it; or (b) if the foreign State or entity, by itself or another, trades within the local limits of the jurisdiction of the court; or (c) if the foreign State or entity is in possession of immovable property that is situated within those limits of the court.
72. In terms of procedure, before a claim is brought against a foreign defendant, the claimant has to seek the central government's consent to do the same. However, this would also vary from case to case. For instance, in some specific instances, it has been recognised by the Supreme Court that if there has been an express or implied waiver of privilege by the foreign defendant, then there would not be any need to get the central government's consent before bringing a civil claim against the foreign defendant.¹⁴⁶ In such cases, the Court held that the specific statute under which the claim arises would supersede the general provisions of the CPC.

141 Rehan Abeyratne, 'Ordinary Wrongs as Constitutional Rights: The Public Law Model of Torts in South Asia' (2018) 54(1) Texas International Law Journal 1, 8.

142 Asian Legal Resource Centre, '[India: Remedies to Human Rights Violations a Mirage](#)' (25th Session of the Human Rights Council, 8 March 2013).

143 Amnesty International, '[India: Excessive Use of Force, Arbitrary Detention and Punitive Measures Against Protesters Must End Immediately](#)' (Amnesty International India, 14 June 2022); Martina Igini, '[5 Biggest Environmental Issues in India](#)' (Earth.Org, 17 June 2022); Shweta Tambe, Chandan Kumar and Sundara Babu Nagappan, '[Woes of India's Migrant Workforce](#)' (The Leaflet, 4 May 2022);

144 [S.19](#) of the CPC.

145 *ibid* [s.16](#), [s.17](#) and [s.18](#).

146 *Ethiopian Airlines v Ganesh Narain Saboo* MANU/SC/0975/2011.



Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

73. The authors recommend the following resources to learn more about civil liability for human rights violations in India.

Books

- Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016).
- C Raj Kumar and K Chockalingam (eds), *Human Rights, Justice, and Constitutional Empowerment* (Oxford University Press 2007).
- RK Bangia, *Law of Torts* (21st edn, Allahabad Law Agency 2008).
- Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (Oxford University Press 2000).
- MP Jain, *Indian Constitutional Law* (LexisNexis 2010).
- SP Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2003).
- SK Verma and KK Verma (eds), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press 2000).
- Ratanlal and Dhirajlal, *The Law of Torts* (LexisNexis 2020).
- CK Takwani, *Civil Procedure with Limitation Act, 1963* (Eastern Book Company 2020).
- Surya Deva, 'India: Constitutional Torts 'Ruling the Roost?' in Ekaterina Aristova and Uglješa Grušić (eds), *Civil Remedies and Human Rights in Flux* (Hart Publishing 2022).

Journal articles

- Shyamkrishna Balganesh, 'The Constitutionalization of Indian Private Law' (2016) Faculty Scholarship at Penn Law 1557.
- Rehan Abeyratne, 'Ordinary Wrongs as Constitutional Rights: The Public Law Model of Torts in South Asia' (2018) 54 Texas International Law Journal 1.
- Usha Ramanathan, 'Tort Law in India' (2001) Annual Survey of Indian Law 615.
- CM Abraham and Sushila Abraham, 'The Bhopal Case and the Development of Environmental Law in India' (1991) 40(2) International and Comparative Law Quarterly 334.
- KC Joshi, 'Compensation Through Writs: Rudul Sah to Mehta' (1988) 30(1) Journal of the Indian Law Institute 69.
- R Ramamoorthy, 'Difficulties of Tort Litigants in India' (1970) 12(2) Journal of the Indian Law Institute 313.

Reports

- Centre for Social Justice, Common Cause, Prayas, Daksh, Vidhi Centre for Legal Policy and Commonwealth Human Rights Initiative, '[India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid](#)' (Tata Trusts, 2019).
- Surya Deva, '[Background Paper for India's National Framework on Business and Human Rights](#)' (Ethical Trading Initiative 2016).
- International Commission of Jurists, 'Access to Justice: Human Rights Abuses Involving Corporations' (ICJ 2011).

Websites

- [NHRC, How to file an online complaint – operational guidelines](#)
- [NHRC, format for complaint registration](#)
- [Human Rights Commissions Network – online complaint filing](#)
- [Format of writ petition in the Supreme Court of India](#)



CaseScenarios

1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



CaseScenario 1

Q1

Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

74. A writ petition under articles 32 and 226 of the Constitution could be brought in any High Court or in the Supreme Court against the police for an enforcement of the protesters' fundamental rights, especially under article 19(1)(b) and article 21 that encapsulate the fundamental right of the protesters to assemble peacefully and without arms, and the right to life to personal liberty. Given the number of victims in this case scenario, the claim can also be brought as a public interest litigation.
75. Alternatively, as described in [52]-[54] individual claimants can also bring a civil suit against the police and Security Co under the law of torts for assault, battery and false imprisonment.¹⁴⁷ To establish battery, there should have been a use of force, and the force should have been intentional and without any lawful justification. The claimant does not need to prove that there was any harm from the use of force.¹⁴⁸ Assault is established if any act of the defendant (in this case, the police or the private security company) causes the claimant to have reasonable apprehension of infliction of battery.¹⁴⁹ The private security forces can be implicated as joint tortfeasors in such a suit.

Q2

If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.

76. A claim for monetary compensation under the writ jurisdiction of the constitutional courts would be the preferred route for holding perpetrators in Case Scenario 1 to account since there has been a prima facie violation of the protesters' fundamental rights.
77. However, alternatively, individual claimants can also seek to bring a criminal complaint against the police and Security Co under [section 107](#) (Abetment of a Thing), [section 349](#) (Force), [section 350](#) (Criminal Force) and [section 351](#) (Assault) of the IPC. The punishment would be a fine, imprisonment or both.

¹⁴⁷ Bangia, (n 100) 153-164.

¹⁴⁸ *ibid* 153.

¹⁴⁹ *ibid* 155.



Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

78. *People's Union for Democratic Rights v State of Bihar*¹⁵⁰ remains an important precedent for Case Scenario 1. In this case, around 600-700 protesters, mostly belonging to economically disadvantaged classes, had assembled to hold a peaceful meeting, when they were subject to indiscriminate shooting by the police who had opened fire on the crowd. The Supreme Court awarded monetary damages of INR 20,000 (~USD 246) for every case of death and INR 5,000 (~USD 62) for every case of injury.
79. In *Uttarakhand Sangharsh Samiti v State of Uttar Pradesh*,¹⁵¹ the Allahabad High Court awarded compensation of INR 25,000 (~USD 307) to injured protesters; INR 1,000,000 (~USD 12,292) to the families of those who died due to police brutality; INR 1,000,000 (~USD 12,292) to women who were raped; INR 500,000 (~USD 6,146) to women who were molested; and INR 50,000 (~USD 615) to those who were unlawfully detained by the police. The Court emphasised that the compensation awarded was distinct from and in addition to any remedy in private law for damages in tort that could be awarded to any victim who sought private relief against personal injury. In both of these cases, the emphasis was on the violation of fundamental rights by agents of the State. Another important case relevant to this case scenario in terms of corporate (or private party) complicity with the State in the violent suppression of the civil society protests against Enron's Dabhol power plant project in Maharashtra.¹⁵²
80. Instances of unlawful arrests, detention and violence against peaceful protesters are a frequent occurrence in India.¹⁵³



¹⁵⁰ *People's Union of Democratic Rights v State of Bihar* AIR 1987 SC 355.

¹⁵¹ *Uttarakhand Sangharsh Samiti v State of Uttar Pradesh* MANU/UP/1607/1996.

¹⁵² Amnesty International, '[India: The Enron Project in Maharashtra: Protests Suppressed in the Name of Development](#)' (16 July 1997).

¹⁵³ Human Rights Watch, '[Stifling Dissent: The Criminalization of Peaceful Expression in India](#)' (24 May 2016); Amnesty International, '[India: Government Must Stop Crushing Farmers' Protests and Demonizing Dissenters](#)' (9 February 2011); Human Rights Watch, '[India: Deadly Force Used Against Protesters](#)' (23 December 2019).

CaseScenario 2

Q1

Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

81. A writ petition under articles 32 and 226 of the Constitution could be brought in any High Court or in the Supreme Court against Parent Co and Subsidiary Co. The right to live in a healthy environment is an established interpretation of article 21 of the Constitution. Given the nature of the violation, the extent of possible damage and the number of victims in this case scenario, the claim could also be brought as a public interest litigation. As discussed in [60] and [61], under the doctrine of enterprise liability and the exceptions to the doctrine of piercing the corporate veil, Parent Co can be held liable for violation of the claimants' right to life under article 21 of the Constitution. Claimants can also bring civil suits under tort law for nuisance, trespass, negligence and strict liability. To establish trespass, there should have been an intentional invasion of the claimants' physical possession of property; and such interference should have been direct in nature.
82. In addition, the claimants can file a civil suit under [section 91](#) of the CPC for public nuisance. Specific to the nature of harm caused by Subsidiary Co's actions, the claimants can also file civil suits under statutory provisions, including (but not limited to) the Air (Prevention and Control of Pollution) Act, 1981, with Rules; the Water (Prevention and Control of Pollution) Act, 1974, with Rules; the Water (Prevention and Control of Pollution) Cess Act, 1977; Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008; Hazardous and Other Wastes Rules, 2016; Solid Waste Management Rules, 2016; Public Liability Insurance Act, 1991, with Rules; Oil Mines Regulations, 1984, under the Mines Act, 1952; Environment Impact Assessment Notification, 2006; and the Environment Protection Act, 1986, with Rules. Section 16 of the Environment Protection Act, for instance, notes that where an offence has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.



If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.

83. Alternatively, claimants can also file a criminal complaint against Parent Co and Subsidiary Co under [section 268](#) (Public Nuisance), [section 269](#) (Negligent Act Likely to Spread Infection of Disease Dangerous to Life), [section 277](#) (Fouling of Water of Public Spring or Reservoir) and [section 278](#) (Making Atmosphere Noxious to Health) of the IPC. [Section 290](#) and [section 291](#) of the IPC enlist the punishments for public nuisance. [Section 11](#) of the IPC defines 'person' as including any company or association or body of persons, whether incorporated or not. Chapter X ([sections 133-143](#)) of the Code of Criminal Procedure, 1973 (CrPC) provides for the procedure for enforcement and remedies for public nuisance. For instance, the CrPC empowers a magistrate to restrain any person from carrying out an act that may give effect to public nuisance. In addition, section 91 of the CrPC prescribes that a suit may be filed to obtain suitable relief or injunction for any cause of action affecting or likely to affect public nuisance. [Section 426](#) (Punishment for Mischief), [section 430](#) (Mischief by Injury to Works of Irrigation or by Wrongfully Diverting Water), [section 431](#) (Mischief to Injury to Public Road, Bridge, River or Channel) and [section 432](#) (Mischief by Causing Inundation or Obstruction to Public Drainage Attended with Damage) of the IPC also punishes pollution caused by mischief.



Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

84. In terms of its precedent value to environmental cases, the *Oleum gas leak* case remains a key case relevant to Case Scenario 2. With an expanding understanding of article 21, the doctrine of enterprise liability and the doctrine of absolute liability, the case is a cornerstone in holding Parent Co and Subsidiary Co accountable.¹⁵⁴ In terms of exemplary damages, the Supreme Court imposed a fine of 1 billion rupees (~USD 12.29 million) against Sterlite, a subsidiary of the UK based Vedanta Resources, for polluting the environment in the state of Tamil Nadu.¹⁵⁵

85. Another case of successful judicial intervention was in the case of Coca-Cola's Mehdiganj plant in Uttar Pradesh, where authorities ordered the closure of the bottling plant for over-extracting groundwater and for releasing pollutants above set limits.¹⁵⁶ In another location, Coca-Cola closed down its operation in the Plachimada plant in Kerala due to protracted protests from the local community against its over-extraction and pollution of the environment.¹⁵⁷ It is also important to note that in this case, the plant was situated in the midst of agricultural land that historically belonged to the local indigenous tribal community of the region.

¹⁵⁴ *Oleum gas leak* case (n 40).

¹⁵⁵ BBC News, '[Sterlite: Vedanta Smelter in India Fined 1bn Rupees for Pollution](#)' (2 April 2013).

¹⁵⁶ AFP, '[Indian Officials Order Coca-Cola Plant to Close For Using Too Much Water](#)' (*Guardian*, 18 June 2014).

¹⁵⁷ The Hindu Net Desk, '[Water Wars: Plachimada v Coca-Cola](#)' (*The Hindu*, 15 July 2017).

In addition, the Supreme Court's decision against Vedanta Resources concerning its mining plant in the Niyamgiri hills is another important case study.¹⁵⁸ The Supreme Court, in its order, held that the affected communities must be consulted about the project before it could go ahead. Amongst a wide range of human rights violations, Vedanta's presence has greatly affected the identity and livelihood of the deeply isolated Dongria Kondh tribe, through forcible evictions, water pollution, air pollution, and displacement of the indigenous population.¹⁵⁹ Other high profile examples of civil society unrest against polluting industries include the protests against the setting up of the steel plant by Jindal Steel Works in Odisha;¹⁶⁰ against the South Korean steel plant of the Pohang Steel Company in Odisha;¹⁶¹ and against the Kudankulam Nuclear Power Plant in Tamil Nadu.¹⁶²

86. While liberal government policies and patronage have increased the growth of extractive industries, the sector continues to be opaque and largely unaccountable for its environmental and social impacts.¹⁶³ With extractive industries rapidly expanding to ecologically and culturally sensitive areas of the country, instances of backlash from local communities¹⁶⁴ are occurring more frequently in response to issues of illegal mining, lack of proper social and environmental impact assessments, direct and indirect industry-induced displacements, human rights violations and systemic corruption at all levels of government.¹⁶⁵ Often, environmental concerns are dismissed when weighed against the need for development.¹⁶⁶



158 Jo Woodman, '[India's Rejection of Vedanta's Bauxite Mine is a Victory For Tribal Rights](#)' (*The Guardian*, 14 January 2014).

159 OECD Watch, '[Survival International v Vedanta Resources plc](#)' (2009).

160 Sumedha Pal, '[As Anti-Jindal Protests Continue in Odisha's Dinkia, Villagers Face Police Violence, Arrests](#)' (*The Wire*, 18 January 2022); Satyasundar Barik, '[Activists Allege Police Brutality Near Proposed Odisha Steel Project Site](#)' (*The Hindu*, 15 April 2022).

161 Priya Ranjan Sahu, '[As POSCO Exits Steel Project, Odisha is Left with Thousands of Felled Trees and Lost Livelihoods](#)' (*Scroll.in*, 22 March 2017).

162 Vidhi Doshi, '[The Lonely Struggle of India's Anti-Nuclear Protesters](#)' (*The Guardian*, 6 June 2016); Human Rights Watch, '[India: End Intimidation of Peaceful Protesters at Nuclear Site](#)' (11 May 2012).

163 Human Rights Watch, '[Out of Control: Mining, Regulatory Failure and Human Rights in India](#)' (14 June 2012).

164 For a case study relevant to Case Scenario 1 and Case Scenario 2 see Tehelka Bureau, '[Enron: A History of Human Rights Abuse in India](#)' (14 December 2020). See also, Richard Wachman, 'Vedanta Bosses Clash With Protesters Over Pollution and Human Rights' (*The Guardian*, 27 July 2011); BBC News, '[The Grassroots Movement That Shut Down an Indian Copper Plant](#)' (29 May 2018).

165 Ritwick Dutta, R Sreedhar, and Shibani Ghosh, '[India: Development at a Price – Increasing Transparency and Accountability in the Extractive Industries](#)' (2012) Revenue Watch Institute and Transparency International Initiative. See also, Rajib Dutta, '[Assam: Oil Leak from ONGC Pipeline Spills Into Farmland in Sivasagar](#)' (*Times of India*, 24 June 2021); Suhasini Raj, '[Oil Spill Near Chennai, India, Threatens Wildlife](#)' (*New York Times*, 3 February 2017); Malavika Vyawahare, '[Chennai Oil Spill Could Severely Impact Marine Life, Environmentalists Say](#)' (*Hindustan Times*, 6 February 2017); and Abhijit Singh, '[Chennai Oil Spill Underlines Uncomfortable Truths](#)' (*Observer Research Foundation*, 7 Feb 2017).

166 Swansy Afonso, Rajesh Kumar Singh, and Debjit Chakroborty, '[Modi Govt's Environment Rules Overhaul Sparks Fears of Return to Grim Past](#)' (*Business Standard*, 9 September 2020) and Rohini Mohan, '[Narendra Modi's War on the Environment](#)' (*Al-Jazeera America*, 10 April 2015).

CaseScenario3

Q1

Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.

87. From the facts presented in Case Scenario 3, the claimants would have a claim against Factory Co under the writ jurisdiction of the constitutional courts under articles 32 and 226 of the Constitution. As discussed in [27], the Supreme Court has held that the duty to protect the health and safety of workers is applicable to the State and to private industries, and that any instance of forced or bonded labour has to be looked at within the context of the circumstances and conditions in which the worker was made to work. The repeated and systemic exploitation of the workers by Factory Co means that the claimants will have a prima facie case for violation of their fundamental rights under articles 14, 16, 21 and 23 of the Constitution. Given the number of persons affected by the working conditions at Factory Co, the claim can also be brought as a public interest litigation. In terms of the specific nature of the abuse, the claimants have a claim against Factory Co under articles 21 and 23 for compulsory unpaid overtime, a claim under article 21 for poor workplace safety that was directly responsible for the deaths and injuries sustained by the victims in the fire, and a claim under articles 14 and 16 for discrimination on grounds of sexual harassment at workplace.
88. The claimants can also file a civil suit against Factory Co under the law of torts for negligence for poor workplace safety conditions (lack of emergency procedures, ineffective fire safety equipment and few emergency medical supplies, barred windows, closed emergency exits, broken smoke alarms) that resulted in the workers suffocating and being burned alive. Factory Co can also be held liable under the law of torts for assault and battery for the physical abuse sustained by the workers. Brand Co may also be implicated as a joint tortfeasor, depending upon the nature of the contractual arrangement between Brand Co and Factory Co, and the extent to which Brand Co had a say in the employment conditions of the workers.
89. In addition, and based on the nature of harm caused by Factory Co's actions and the nature of the contractual agreement between the claimants and Factory Co, individual claimants can also file civil suits under statutory provisions,¹⁶⁷ including

167 Briefly, the Industrial Disputes Act, 1947, restricted for the purposes of 'workmen' alone, lays down the principles and processes of industrial disputes, industrial action, regulation of retrenchment, layoffs, closure, transfer of undertakings, constitution of work committees, and changes in service conditions of workmen. The (state-specific) Shops and Establishments Act regulates the service conditions of employees engaged in shops and commercial establishments (including most private companies). It regulates hours of work, payment of wages, overtime, leave, holidays and other conditions of service. The Payment of Wages Act, 1936 regulates the mode and method of payment of wages to certain categories of employees and to those employed in factors and industrial establishments. Factories Act, 1948 regulates the working conditions in factories where manufacturing operations are undertaken. It has extensive provisions regarding the health, safety and welfare of workers in factories. The Minimum Wages Act, 1948 provides for the payment of minimum rates of wages to employees working in specific kinds of employment (including conditions for overtime pay) as fixed by the Government. The Contract Labour (Regulation and Abolition) Act, 1970 provides for regulation of contract labour in establishments and provides for its abolition in certain circumstances. Finally, the Workmen's Compensation Act, 1923 provides for compensation to workers who have encountered injuries due to an accident during their employment.

- (but not limited to) the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; the Factories Act, 1948, and the local Shops and Establishments statute (specific to the state in which Factory Co is established); the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Bonded Labour System (Abolition) Act, 1976; the Contract Labour (Regulation & Abolition) Act, 1970; the Industrial Disputes Act, 1947; and the Employees Compensation Act, 1923.
90. Under the Factories Act, 1948, Factory Co is obligated under [section 38](#) (Precautions In Case of Fire) to take all practicable measures to prevent the outbreak of fire and its spread, both internally and externally and to provide and maintain (a) a safe means of escape for all persons in the event of a fire, and (b) the necessary equipment and facilities for extinguishing fire.¹⁶⁸ It also notes that Factory Co is obligated to take all effective measures to ensure that in every factory, all workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases. [Section 59](#) (Extra Wages for Overtime) also entitles workers to payment for overtime work. As a result, claims concerning the general health,¹⁶⁹ safety¹⁷⁰ and welfare conditions,¹⁷¹ particularly the lapses in the fire safety and prevention mechanisms, can be brought against Factory Co under [section 92](#) (General Penalty for Offences), [section 93](#) (Liability of Owner of Premises in Certain Circumstances) and [section 94](#) (Enhanced Penalty After Previous Conviction) of the Factories Act, 1948.
91. Similarly, claims can also be brought under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, against the perpetrators. Under this Act, workplace includes both the organised and the unorganised sector.¹⁷² It mandates employees to set up committees (in case of private companies) or empowers local government officials (in case of the informal sector) to hear complaints, conduct inquiries and recommend remedial action to be taken against the defendants.¹⁷³
92. The Act also lays down how compensation amounts are determined. The compensation shall have regard to: the mental trauma, pain, suffering and emotional distress caused; the loss in career opportunities due to the incident of sexual harassment; medical expenses incurred by the victim for physical or psychiatric treatment; the income and financial status of the defendant; and the feasibility of payment in lump sum or in instalments.¹⁷⁴ The Act also mandates the duties of the employer, inter alia, to provide a safe working environment at the workplace and to assist the claimant in pursuing a criminal complaint against the defendant under the IPC.¹⁷⁵
93. As discussed in [44], the Employees Compensation Act, 1923, holds the employer liable for compensation for any personal injury caused to an employee by an accident that arises out of and in the course of their employment. Injured claimants

168 Under [section 93](#) of the Factories Act, 1948, the owner of the premises of the factory is also liable for any contravention of the provisions of this Act in respect of precautions as to fire.

169 *Ibid*, [ss 11-20](#) deals with obligations on the factory owner and manager with regards to the health of the workers.

170 *Ibid*, [ss 21-41](#) deals with obligations concerning safety of the workers.

171 *Ibid*, [ss 42-50](#) deals with obligations concerning welfare of the workers.

172 [S 2\(p\)](#) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH).

173 See also, Human Rights Watch, “[No #MeToo for Women Like Us”: Poor Enforcement of India’s Sexual Harassment Law](#)” (14 October 2020); Anoo Bhuyan and Shreya Khaitan, “[Eight Years On, India’s Law To Prevent Workplace Sexual Harassment is Marred by Poor Data Collection](#)” (Scroll.in, 23 February 2021).

174 [S 15](#), POSH (n 172).

175 *Ibid* s 19.

and dependents of deceased workers at Factory Co will therefore have a claim for compensation under [section 22](#) of the Act.¹⁷⁶

94. As described in [56]-[58], the concepts of vicarious liability and joint and several liability are recognised in tort law in the case of master-agent relationships or in the case of partnerships. Depending on the nature of the agreement between Factory Co and Brand Co, Brand Co can also be held liable for negligence. However, as discussed in [59]-[62], the extent to which Brand Co can be held liable for the wrongful acts or omissions of Factory Co is limited. Nonetheless, legal precedent stresses the need to contextualise the doctrine of enterprise liability in the context of the economic reality of the factual situation. To that extent, the court may be persuaded to pierce the corporate veil to hold Brand Co accountable, especially in light of the relative size of Brand Co in juxtaposition to Factory Co.



If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?

95. Alternatively, claimants can also file a criminal complaint against perpetrators at Factory Co for sexual harassment under [section 354](#) (Assault of Criminal Force to Women with Intent to Outrage Her Modesty), [section 354A](#) (Sexual Harassment and Punishment for Sexual Harassment), [section 354B](#) (Assault or Use of Criminal Force to Woman with Intent to Disrobe), [section 354C](#) (Voyeurism), [section 354D](#) (Stalking), [section 509](#) (Word, Gesture or Act to Insult the Modesty of a Woman) of the IPC. Sexual Offences under the IPC are cognisable offences, with simple or rigorous punishments varying from a fine, to imprisonment ranging from one to seven years, or both.
96. Claimants can also file a criminal complaint against perpetrators at Factory Co for criminal negligence under [section 304A](#) (Causing Death by Negligence), [section 337](#) (Causing Hurt by Act Endangering Life or Personal Safety of Others) and [section 338](#) (Causing Grievous Hurt by Act Endangering Life or Personal Safety of Others) of the IPC and also for any physical abuse endured under section 349 (Force), section 350 (Criminal Force) or section 351 (Assault) of the IPC.
97. Finally, claims can also be brought against Factory Co under [section 22](#) of the Minimum Wages Act, 1948, which provides that any employer who pays any employee less than minimum rates of wages fixed for that employee's class of work, or less than the amount due to him, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

¹⁷⁶ The Employees Compensation Act, 1923, also provides a scheme for calculating compensation that is based on earning capacity under sch I of the Act.



Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

98. As discussed in [27], *People's Union for Democratic Rights case*¹⁷⁷ and *Bandhua Mukti Morcha*¹⁷⁸ are key judgments concerning the rights of workers in India. Both of these judgments sought to contextualise forced labour with regard to the working conditions of employees. Interpreting a right to work and live with dignity within the ambit of article 21 of the Constitution, these cases have concretised the need to hold non-compliance of labour laws as a contravention of the workers' fundamental rights. An example of [successful intervention](#) by a state government was illustrated in Rajasthan, where the state government set up a Mine Workers Welfare Board to work for the mine workers' welfare and safety, and to minimise occupational health hazards from silicosis.
99. More than half of India's workforce is in the informal and unorganised sector. In terms of employment share, the unorganised sector employs 83 per cent of the work force, with 17 per cent in the organised sector.¹⁷⁹ Over 92 per cent of informal workers in the economy are without any of the social security benefits of written contracts, paid leave, maternity benefits and other key welfare benefits. In an attempt to hold brands liable for abysmal working conditions in factories, the Asia Floor Wage Alliance and local labour unions have filed legal complaints against H&M to the labour department in Bengaluru, Karnataka. The complaint has sought to hold H&M jointly liable for labour abuses at a supplier factory since the brand had 'total economic control over the workers' subsistence, skill and continued employment.'¹⁸⁰ An investigation by the Worker Rights Consortium also found that the management of Shahi Exports Pvt Ltd, a factory that makes apparel for Columbia Sportswear and apparel for Benetton, H&M and Abercrombie & Fitch, had repressed and retaliated against workers' exercise of their fundamental rights, including using beatings, death threats, gender- and religion-based abuse and expulsion of workers.¹⁸¹ Moreover, with increasing instances of fires at factories, cases of holding factory owners or managers accountable for negligence have also increased.¹⁸²

¹⁷⁷ *People's Union for Democratic Rights* (n 17).

¹⁷⁸ *Bandhua Mukti Morcha* (n 23).

¹⁷⁹ SV Ramana Murthy, 'Measuring Informal Economy in India: The Indian Experience' (14 November 2019) IMF Seventh Statistical Forum. See also, The Wire Staff, '[Nearly 81% of the Employed in India Are in the Informal Sector: ILO](#)' (*The Wire*, 4 May 2018).

¹⁸⁰ Annie Kelly, '[Top Fashion Brands Face Legal Challenge Over Garment Workers' Rights in Asia](#)' (*The Guardian*, 9 July 2021).

¹⁸¹ Worker Rights Consortium, '[Workers Who Were Beaten Return to Columbia Supplier Factory in India, Now Violent Managers and Supervisors Must Go](#)' (28 June 2018).

¹⁸² PTI, '[Chemicals Factory Fire: Four Including Owner, Manager Arrested for Negligence](#)' (*Firstpost*, 13 March 2018); HT Correspondent, '[Fire at Panchkula Factory: Owner Booked for Negligence](#)' (*Hindustan Times*, 4 November 2021); Express News Service, '[A Day After Hapur Factory Fire, Police Register Case Against Factory Owner and Manager](#)' (*Indian Express*, 5 June 2022).

100. Instances of labour exploitation remain routine in India.¹⁸³ Despite the existence of an extensive regulatory and statutory regime, this includes workers being forced to stay overnight to complete orders, sleeping on factory floors, not being paid minimum wages,¹⁸⁴ not being allowed to take toilet breaks, not being allowed to drink water or have lunch on their shifts, increased workloads,¹⁸⁵ instances of sexual abuse,¹⁸⁶ and increasing instances of informal contract work, amongst other examples of exploitation. It is also important to note that pro-industry policies have further widened the scope for labour exploitation, especially with some suspension of the provisions of labour laws to help industries recover from losses in the wake of the Covid-19 lockdowns.¹⁸⁷



183 Siddharth Kara, 'Tainted Garments: The Exploitation of Women and Girls in India's Home-Based Garment Sector' (Blum Center for Developing Economies 2019); and Rajini Vaidyanathan, '[Indian Factory Workers Supplying Major Brands Allege Routine Exploitation](#)' (*BBC News*, 17 November 2020). See also, Gaurav Vivek Bhatnagar, '[In NCR Industrial Heartland, Workers Continue to Lose Limbs, Livelihood in Auto Sector Mishaps](#)' (*The Wire*, 29 January 2022).

184 Rebecca Ratcliffe, '[Major Western Brands pay Indian Garment Workers 11p an Hour](#)' (*The Guardian*, 1 February 2019); Worker Rights Consortium, '[Sweeping Minimum Wage Violations in Karnataka, India](#)' (14 October 2021).

185 Gethin Chamberlain, '[India's Clothing Workers: "They Slap Us and Call Us Dogs and Donkeys"](#)' (*The Guardian*, 25 November 2012).

186 Annie Kelly, '[Female Workers at H&M Supplier in India Allege Widespread Sexual Violence](#)' (*The Guardian*, 9 March 2021).

187 Reuters, '[India's Workers Face "Race to the Bottom" of Labour Standards](#)' (*Al Jazeera*, 13 May 2020); Niharika Chopra, '[The Cost of Covid-19 Lockdown: Rise in Bonded Labour and Human Trafficking in India](#)' (*Outlook*, 13 April 2020).

