

Study on Punitive Damages in Environmental Torts

Wang Chuxuan

*Zhejiang Agricultural and Forestry University, Hangzhou, China
wang_chuxuan@163.com*

Abstract: *Currently, there are issues pertaining to environmental infringement damages in China. Alongside this, all sectors of society are growing increasingly concerned about this matter. China has also taken measures to address the problem. In terms of legislation, the Tort Liability Law was passed in 2009, followed by the newly revised Environmental Protection Law in 2015, among other relevant laws. These laws have to some extent established mechanisms to address China's environmental infringement damages. However, due to the unique characteristics of environmental infringement, such as the complexity of the infringing behavior, the wide range of subjects experiencing varying levels of damage, and the presence of uncertainty, these laws have certain limitations in providing solutions. These limitations are mainly manifested in the following aspects: Firstly, the scope of environmental infringement damages tends to be more focused on some direct losses, while indirect damages are often overlooked, leading to inadequate compensation for victims. Secondly, the criteria for judging moral damages from environmental infringement are strict, resulting in some victims of emotional harm not being compensated. Lastly, our social relief system is not sufficiently developed, leaving many aggrieved parties unidentified and severely harmed. As environmental infringement victims often do not receive compensation, it is crucial to enhance China's mechanisms for addressing environmental infringement damages.*

Keywords: *Environmental violations; compensation for damages; socialization*

1. Introduction

Punitive damages as a special private punishment in civil law is unique. In the increasingly frequent environmental infringement and the lack of a more reasonable solution at the same time, the introduction of punitive damages in the environmental infringement of the problem of evil solution can be conducive to solving the problem of environmental infringement of the penalty.

2. Status of Environmental Abuses in China

With the comprehensive and rapid advancement of China's social economy, particularly in recent years, there has been a significant improvement in the national standard of living. However, this has also led to several environmental challenges that demand the attention of society as a whole. The current scale of industrial production has led to the excessive exploitation of natural resources. Furthermore, certain enterprises, hampered by their own inadequate scientific research capabilities, backward technology and equipment, and low-level pollution management, persist in outdated, pollution-intensive, and energy-consuming production modes. This has resulted in significant pollution of the natural environment, escalating environmental conflicts, affecting the living environment of the residents, and undermining the sustainable development of society. The most direct outcome of such environmental infringement is environmental pollution and destruction, resulting in increasingly serious environmental problems.^[1]

2.1. Status of Environmental Violations in China

Reflecting on the current social and environmental situation in China, the issue of air pollution is particularly severe. The phenomenon of haze is still frequent, especially in the winter, causing inconvenience to the daily commute of the local residents in various parts of the country and posing a threat to their health. Furthermore, the quality of water resources also presents significant challenges. Numerous rivers are severely polluted, with some watersheds having a high proportion of major tributaries contaminated. The problem of eutrophication in lakes and reservoirs remains unresolved.

Certain offshore waters are seriously polluted, and the insufficient purification capacity of urban water supplies has resulted in a plethora of odorous, blackened bodies of water. This pollution has severely damaged ecological bodies of water, preventing the sustainable recycling of water resources. Moreover, in terms of soil quality, there is a frequent exceedance of standards, especially in industrially developed regions. In southwestern and south-central regions, there is a significant environmental issue concerning the high levels of heavy metals in the soil.^[2] It is worth noting that the impact of environmental infringement is not only persistent over time but also extensive in its spatial scope. It not only pollutes and destroys the natural environment, but it can also pose serious, yet hard-to-detect threats to humans living in such environments. These include damage to organ functions, and even mutations, that can profoundly hamper human survival and development. According to statistics from the Supreme People's Court, environmental infringement cases in China have been rapidly increasing in recent years, with an annual growth rate of nearly 25%. The issue of tort compensation arising from environmental infringements has become increasingly prominent nationwide, developing into a significant social problem.^[3]

2.2. Limitations of the Compensatory Damages System in China's Environmental Torts

For a long time, China has employed the filling of homogeneous compensation as the basic principle in addressing environmental torts. This principle primarily emphasizes compensation to the victims of environmental torts, focusing on their personal and property losses. It also considers the social harm arising from the severe pollution of the environment, particularly the loss of cultural and ecological functions produced by the ecosystem. In recent years, there has been a progressive introduction and exploration of pilot schemes for environmental infringements. These initiatives demand that the offenders bear responsibilities, such as the elimination of pollution, ecological restoration, and the costs associated with ecological damage compensation investigation, environmental assessment, and evaluation. The intent is to penalize the offenders for the detrimental consequences resulting from their environmental infringement actions. Undeniably, this series of measures has contributed significantly to combating environmental pollution in our country. However, there remains a substantial gap between these measures and the overall requirements of ecological civilization construction. The main shortcomings are manifested as follows:

Firstly, the losses of victims cannot be fully compensated. Practically speaking, the harm caused by environmental infringements to the infringer is not merely a simple property loss. It also encompasses the infringement of personal rights among other issues. Currently, the existing legal provisions in our country for the protection of personal rights, particularly in terms of emotional distress compensation, do not align with the specificity of judicial practice, environmental infringement. This leads to a lack of consensus in judicial practice on whether and how to apply compensation for emotional distress in environmental cases. Moreover, the scope and conditions for the application of emotional distress compensation are excessively stringent. The emotional damage experienced by the victims often far outweighs the compensation they receive. To a certain extent, that their rights have not been fully redressed. From the perspective of environmental rights and interests, the ecological damage compensation system, which has been recently piloted in China, mainly targets cases of environmental infringements that cause severe damage. However, in practice, the extent of damage in most cases does not reach the threshold of severe harm. This results in these victims being unable to secure their rights through the ecological damage compensation system, implying that their losses cannot be fully compensated. Additionally, environmental pollution has its distinct particularities, including cumulative consequences. Long-term minor environmental damage will certainly cause harm to the public's environmental rights and interests over an extended period. The current ecological damage compensation system does not include such cases within its scope, which is clearly inappropriate.

The current system of compensation for environmental infringement damage is anchored on the quantifiable actual losses resulting from such infringement. This system, being essentially compensatory in nature, fails to adequately address the distinctive aspects of environmental infringement, such as its indirectness and the often significant disparity in power between the involved parties. This shortfall leads to an inadequate relief for victims of environmental infringement. Specifically, due to the indirect and complex characteristics of environmental infringement, the damage process tends to be prolonged. This situation necessitates a high level of professional expertise for assessing the damage incurred. It often requires the engagement of highly skilled professional teams with relevant qualifications, which comes with considerable costs. Consequently, this results in a substantial burden for the victims who must prove the damage they have suffered. Additionally, in environmental infringement cases, there is typically a substantial disparity in litigation power between

the disputing parties. This invariably increases the difficulty of litigation for the victims. The existing compensatory damages are difficult to reflect the actual damage and litigation costs incurred by the victim due to environmental infringement, resulting in difficulties for the victim to protect their rights and jeopardize their legitimate interests.

Secondly, it is difficult to establish an effective, long-term mechanism to curb environmental infringements. The prevailing compensatory damages filling method fails to reflect the true damages borne by victims, society, and the ecological environment due to environmental infringements. The liability assumed by the offender is significantly lower than the actual damages incurred, which also to some extent condone the recurrence of infringement. This inability to create a long-term mechanism for punishment and warning is manifested as follows: First, the compensation system that caps damages at the actual loss implies that the amount of compensation is often far lower than the actual damage. In reality, environmental infringers are basically enterprises with strong economic capacity. The benefits they derive from environmental infringements far exceed the cost they pay, leading to persistently high industry risk returns. As a result, many companies do not perceive compensatory damages as a form of judicial punishment, but merely as a necessary cost of business operations. This perspective tacitly condones environmental infringements. Even when they are sanctioned by the law and are obliged to pay damages to victims, these companies can still make substantial profits. Consequently, damages fail to deter environmental infringements but instead serve as a 'pricing' mechanism for environmental pollution. This contravenes the original intent of environmental infringement legislation and undermines environmental justice. Secondly, the current legal regulation of environmental infringements relies heavily on the victims recognizing their rights and interests are damaged and being able to prove the wrongdoer's culpability. This leads to a situation where many environmental infringers escape legal sanction for several reasons: they may deliberately conceal their infringements or destroy evidence to evade legal repercussions; due to the latent period and indirect nature of environmental infringements, not all violations can be detected promptly; even when infringements are discovered, there's no assurance of legal sanction. For instance, the level of proof of damage may not meet the legal standards, or the victims may be dissuaded from filing lawsuits due to the disproportionate costs of litigation and potential compensation, leading them to give up the judicial litigation.

Given the above, China's current rate of detecting environmental infringements is low, and the compensatory punishment mode is ineffective at deterring environmental infringers and preventing repeat offenses. Therefore, it is necessary to intensify efforts against environmental infringements and increase the compensation standard. Specifically, the damages for environmental infringements should significantly exceed the actual quantifiable consequences of the damage. This approach to compensation aims to address the low detection rate of environmental infringements.

3. An Overview of Punitive Damages

Punitive damages are a form of damages, as opposed to compensatory damages. The term "punitive damages" first appeared in English case law in the 18th century and has been a topic of discussion in theory and practice ever since. Until now, there has been no uniformity in the system of punitive damages between the statutory law countries and the case law countries.

3.1. Meaning of Punitive Damages

In judicial practice, case law countries are more inclined to apply the system of punitive damages, while statutory law countries are more conservative in the application of punitive damages.

However, the concept of punitive damages has never been standardized and is highly controversial. Different countries have diverse interpretations and understandings of this system, and a universally accepted viewpoint has not yet been formed. Punitive damages, originally translated from the English term "punitive damages," are explained in the "New Oxford English-Chinese Dictionary" as "legal damages exceeding mere compensation, imposed on the defendant as a punishment." From this, it is clear that the emphasis of punitive damages is not solely on compensating the infringers for losses incurred. Rather, it takes a step further in punishing those who violate environmental laws, with the aim of preventing future violations by requiring the infringers to bear a financial burden significantly exceeding the damages caused by their actions. Professor Yang Lixin highlighted that, in contrast to compensatory damages, punitive damages represent a unique form of civil liability. Defendants are required to bear a burden of compensation that far exceeds the actual losses experienced by the plaintiff.

This creates a potent deterrent designed to prevent and curb the defendant from committing further environmental infractions. Professor Zhang Xinbao pointed out that the application of punitive damages should primarily be based on a determination of the defendant's subjective malignancy. Drawing from the views of various scholars, the author offer a simplified generalization: punitive damages serve to penalize particularly serious and egregious unlawful actions, to deter the recurrence of similar offenses, and mandate the defendant to bear a financial burden greater than the actual damage compensation.

3.2. Punitive Damages in China

After the reform and opening up, China began to refocus on civil legislation. However, due to the influence of traditional legal culture and the intellectual constraints of Soviet thinking, which did not recognize the distinction between public and private law, the General Principles of the Civil Law of the People's Republic of China continue to prescribe a system of punitive liability. Some scholars argue that the system of punitive damages is a vibrant part of our legal tradition and is widely accepted by the general public. These scholars, based on the characteristic of the punitive damages system to award compensation exceeding actual loss, claim that the system of punitive damages existed in ancient Chinese laws. This argument holds merit to a certain extent. However, a more in-depth analysis of these laws reveals that such provisions primarily focused on the punitive role of public authority, rather than the function and purpose of the punitive damages system in the modern sense. Therefore, strictly speaking, the development of the punitive damages system in Chinese law should be considered to have commenced with the enactment and implementation of the "Consumer Rights and Interests Protection Law."

3.3. Functions of Punitive Damages

Firstly, the punitive function - The fundamental aim of the punitive damages system is to penalize and sanction those who maliciously violate the law. Punitive damages principally focus on mandating the defendant to bear a higher level of compensation for the unlawful act, which in turn inflicts pain, and hence, a feeling of punishment. Thus, the punitive function of punitive damages serves to economically chastise the wrongdoer. Unlike the sanctioning function manifested in compensatory damages, punitive damages highlight the antisocial nature of the unlawful infringement and the subjective awareness of its reprehensibility, reflecting the punishment deserved due to the blameworthiness of the unlawful act. For the wrongdoer, if they are merely asked to compensate for the damage, their intentional act becomes akin to a transaction where only an equivalent amount is demanded. This might allow the wealthy to exploit the law. Only punitive damages can deliver a severe blow to the wrongdoer, ingraining the lesson in their mind, thus achieving the effect of punishment and sanction.^[4]

Secondly, the deterrent (preventive) function - Punitive damages deter unlawful acts by enforcing a higher level of compensation than the actual damage, therefore having a deterrent function similar to criminal punishment. This deterrent function objectively provides a deterrent effect. In other words, the punishment function is essentially an external manifestation of the deterrent function, which is more readily perceived by others. Punishment acts as a deterrent to human rationality, cautioning against engaging in unlawful activities. Punitive damages can impose sufficiently severe punishment that, if adequately deterrent, can dissuade individuals from undertaking illegal activities. Punitive damages, by exceeding compensatory damages, serve as a stark warning to the perpetrator and hence, help in preventing the recurrence of such wrongful acts.

4. The Importance of Introducing Punitive Damages for Natural Resource Protection

4.1. China's Current Environmental Tort Liability

In China, environmental infringement operates under a no-fault liability framework. According to this concept, an offender is deemed liable for any environmental damage provided that a causal link is established between the infringement act and its detrimental consequences, irrespective of whether the offender was at fault. The current Chinese legal statutes stipulate that legal consequences of bearing liability for an infringement involve compensating for the loss, eliminating hazards, restoring to the original state, and issuing apologies. By reviewing and analyzing numerous related cases from Chinese legal practice, it is not hard to discern that the primary litigation claim from plaintiffs who have

suffered environmental infringements primarily revolves around obtaining a certain amount of damage compensation. [5]

Evidently, for victims of environmental infringement, requesting compensation for damages is the most acceptable and most direct method of safeguarding their legitimate rights and interests, but also the infringer is the most acceptable way to safeguard their legitimate rights and interests. Damages belongs to the aftermath of relief, is through the court's intervention will be infringed by the losses suffered by the "fill in the blank", this nature is compensatory. In the past for a long time, China has been using damages is a single compensatory compensation, designed to fill the loss. Compensatory environmental infringement remedies have certain defects, emphasize the tortfeasor's actual loss of compensation, which is not punitive characteristics of a damages, belong to the aftermath of the relief. Through the long-term practice can be seen, the infringed person's relief is incomplete, the neglect of environmental rights and interests, the passive nature of ex post facto relief, as well as the heavy fill in the light of punishment and prevention and other problems are frequent. These problems are key reasons why scholars from all walks of life continue to focus on the application of punitive damages in the realm of environmental infringement. The use of punitive damages, in conjunction with existing remedies for environmental infringement, holds practical value and can effectively make up for the current system deficiencies.

4.2. Importance of Introducing Punitive Damages to the Protection of Natural Resources

Numerous liabilities in ecological environmental torts are for better ecological environmental protection. The distinctiveness of ecological environmental protection is determined by the unique characteristics of this field and the nature of its infringements. Infringements on the ecological environment exhibit completely different characteristics compared to ordinary civil infringements. A brief analysis of these characteristics reveals the following: Firstly, the outcomes resulting from infringements in this domain are complex. Secondly, the state of the inflicted damage tends to be persistent. Thirdly, such outcomes often impact the interests of the majority of people. Fourthly, these outcomes occasionally demonstrate a potential nature. These features are consistently observed in the torts of environmental pollution and ecological destruction, as stipulated in our Civil Code. These characteristics often result in victims not actively seeking legal assistance, thereby preventing their legitimate rights and interests from being fully vindicated. The application of punitive damages can be instrumental in increasing the costs for businesses that violate the law. To effectively protect the ecological environment and better curb the occurrence of ecological environmental infringements, it is imperative to address these issues. Therefore, among the multitude of strategies and measures for ecological environmental protection, it is necessary to incorporate the concept of punitive damage liability to better protect the ecological environment.

4.2.1. The Significance of Punitive Damages in the Protection

The ecological environment is the foundation of human survival and development. Currently, China's ecological environment faces severe challenges, with environmental pollution issues increasingly prominent. The introduction of punitive damages into the sphere of environmental torts signifies a significant achievement in the development of environmental legal systems within the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code). It also represents a significant initiative towards improving China's legal system surrounding environmental infringement responsibilities, aligning with the practical necessities of economic development and environmental protection. Its unique value is as follows:

Firstly, it offers equitable relief for victims of environmental infringement. Due to the unique nature of environmental infringements, the rights of victims are violated in ways differing from those of conventional infringement cases. These violations include both directly provable losses and indirect losses that are difficult to quantify, with such damages being extensive and sustained for the victims. Hence, the law should provide comprehensive and special protection to these victims. Compensatory damages do not genuinely provide complete compensation for the losses suffered by victims. On the other hand, punitive damages offer special relief to victims, covering not only their direct losses but also providing comprehensive aid, thereby effectively compensating for the victims' losses and fully protecting their legal rights and interests. Punitive damages embody the fairness and justice pursued by the law, emphasizing the need to protect victims, often in a vulnerable position. This is an essential demonstration of the practical value of applying punitive damages in environmental infringement cases. Importantly, not only can victims recoup their losses through legal means and obtain compensation beyond their actual losses, but they can also significantly reduce their reluctance to seek legal redress

due to the high costs and complexities associated with environmental infringement litigation. The application of punitive damages significantly incentivizes victims to protect their legal rights and interests, encouraging more involvement in the oversight and environmental protection efforts, thus improving the ecological environment.

Secondly, to make up for the inadequacy of compensatory damages. Punitive damages are born on the basis of the inadequacy of the traditional compensatory damages remedy. On the one hand, the traditional "homogeneous compensation" principle under compensatory damages lacks advantages in tort prevention and is insufficient to deter severe environmental violations that have substantial societal harm and display subjective malignancy. Punitive damages, however, can effectively punish environmental tortfeasors, serve as a deterrent and preventive measure against environmental violations, and promptly curb illegal actions. This can effectively make up for the shortcomings of compensatory damages. On the other hand, compensatory damages in the field of environmental infringements do not require an assessment of the offender's subjective state. As long as the offender has committed an illegal act that has caused damage and there exists a causal relationship between the wrongful act and the consequent damage, irrespective of the offender's subjective fault, it can be applied. This "one-size-fits-all" provision will comply with laws and regulations for the discharge of pollutants to meet the standards of environmental infringement of enterprises to produce negative incentives. As previously mentioned, the outcomes of ecological and environmental infringement cases can be hidden, making it difficult for the victims to receive full compensation solely through compensatory damages. This does not sufficiently protect the interests of the victims. Companies focus on profitability and will gauge potential profits before committing an act. If the cost of violation is low, they can attain substantial profits with a minimal price. This, in turn, can make them more willing to commit infringing acts. Therefore, applying punitive damages can directly increase the cost of corporate violations, discouraging some companies from underestimating the cost of violations, thereby effectively preventing ecological and environmental damage. Compared to compensatory damages, punitive damages take into consideration the subjective malignancy of environmental tortfeasors. This makes up for the shortcomings of the compensatory damages system to a certain extent and makes the legal responsibility in the field of environmental infringements more reasonable.

Thirdly, maintaining social welfare in the face of environmental infringements. Social welfare is primarily public in nature. It is not exclusive to an individual's personal interests, but a group benefit enjoyed by everyone within a public space. The damage to environmental public rights and interests involves many subjects and is complex. It cannot simply be remedied by filling in the damages. It also needs to be addressed through means that effect discipline and prevention in order to better safeguard individual rights and social environmental public interests. Environmental infringements are not individual actions but societal ones, usually causing environmental destruction or pollution through the medium of the environment and impacting the societal environment, necessitating relief for the societal public interest. The application of punitive damages in the field of environmental infringements better protects the damaged environmental public welfare and fulfills the realistic requirements of China's ecological civilization. This helps to achieve the ultimate goal of protecting the ecological environment and safeguarding the public environmental rights and interests. It effectively balances individual interests, social collective interests, and national interests, as well as regional interests and overall interests, to the greatest extent. This results in the unification of sustainable human economic development and sustainable development of the natural environment.

4.2.2. The Role of Penalization and Deterrence Functions for Environmental Protection

Punishment function is the most prominent function of punitive damages, the most central feature of the liability is to have punitive, generally the nature of the process of the tortfeasor to implement the punishment, punitive is to the subjective bad actor to impose heavier punishment. This punishment is typically materialized in the form of substantial monetary compensation, compelling the tortfeasor to pay a hefty price in financial terms. Consequently, this aims to punish the perpetrators and provide relief to the victims. Moreover, by intensifying efforts to punish those who maliciously violate the law, the containment function effectively comes into play. The purpose of the containment function is to achieve the ultimate goal of punitive damages liability. The key method for enacting this function is to impose significant compensation on the tortfeasor, making them realize that committing a tort will invariably result in a steep price to pay, thus deterring them from repeating such illegal acts. This can also serve as a deterrent to other potential wrongdoers, eliminating their intentions of committing infringements and fostering a model of environmental protection within the community. When both functions collaborate, the punitive function is directly displayed in instances of ecological environment infringement, while the containment function is more prominent in ecological environment protection,

ultimately serving to protect the ecological environment.

5. Conclusions

In conclusion, punitive damages not only provide relief for individual rights but also safeguard societal interests damaged by infringements. This form of liability holds unique value in augmenting the cost of violating the law and utilizes substantial compensation to punish and curb ecological and environmental infringements. It holds extreme significance in the field of ecological environmental protection, aligns with China's current stage of development, and thus the application of punitive damages for environmental infringements holds a certain degree of rationality.

References

- [1] Lv Zhongmei. (2013). *Environmental Damage Compensation Law in Theory and Practice*. Beijing: Renmin University of China Press.
- [2] Cai Hui. (2018). *On the Improvement of the Prosecution Subject System of Public Interest Litigation in China*. *Jiangxi Normal University Journal*, 51(05): 116-123.
- [3] Dong Chunhua. (2017). *On the Application of the Comparative Fault System to Intentional Torts*, *Modern Jurisprudence*, 39(06): 61-75.
- [4] Wang Liming. (2003). *A Study of the Punitive Damages System in the United States*. *Comparative law studies*, (05):1-15.
- [5] Kong Dongju. (2016). *On the Construction of Punitive Damages System for Environmental Torts—Taking the Function of Punitive Damages to Fill Social Damages as a Perspective*. *Administration and law*, (02):116-112.