



## International Journal of Research Publication and Reviews

Journal Homepage: [www.ijrpr.com](http://www.ijrpr.com) ISSN 2582-7421

# Vicarious Liability of the State in India: A Critical Analysis of Constitutional Principles, Judicial Trends and the Need for Legislative Reform

**Priyanga B**

HA24079, III-YEAR, BA. LL.B (HONS.), School Of Excellence In Law, The Tamilnadu Dr Ambedkar Law University, Chennai 600113  
[priyangabalamurugan1710@gmail.com](mailto:priyangabalamurugan1710@gmail.com)

### ABSTRACT

The doctrine of State vicarious liability is a cornerstone of public accountability and dictates the circumstances in which the State will be liable to compensate an individual for a civil wrong done by a public servant in the course of his employment. In India the law of State vicarious liability is still very much based upon Article 300 of the Constitution of India, the principles of common law tort and judicial construction. The Supreme Court has in recent times moved to provide greater accountability to the State, particularly where the acts of a public authority are found to be in breach of fundamental rights. The law of ordinary tort liability however continues to be a source of uncertainty with respect to the functions of the State, the scope of employment and the extent of immunity. This paper looks at the development of State liability through a number of key cases: *State of Rajasthan v. Vidyawati*, *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, *Rudul Sah v. State of Bihar*, *Saheli v. Commissioner of Police and Nilabati Behera v. State of Orissa*. It makes the distinction between private law vicarious liability and public law compensation for a violation of the Constitution. It looks at the effect of the reasoning in *N. Nagendra Rao & Co. v. State of Andhra Pradesh* and concludes that whilst constitutional compensation has in effect rendered sovereign immunity largely irrelevant in the context of a violation of fundamental rights, it has not in any way eliminated the need for a proper statutory regime to govern State torts. A principled legislative model is proposed which is based on the concept of employment liability, with a very narrow range of exceptions, effective compensation procedures, transparent claims administration and accountability for serious official misconduct. The core proposition is that State liability should be structured around the nature of the State activity, the nature of the connection between the wrong and public employment and the availability of effective remedies rather than on an expansive and rather nebulous notion of sovereignty.

**Keywords:** Vicarious liability, State liability, Article 300, sovereign immunity, constitutional tort, public accountability, tort law, India.

### Introduction

The modern State has wide powers which extend to the lives, freedom, property and economic interests of individuals. It provides public services, keeps the law and order, runs public institutions, regulates private activity and makes use of its officials to exercise coercive authority. Since these functions are carried out, there is necessarily a possibility of damage resulting from negligence, abuse of power, unlawful detention, wrongful seizure of property and other civil wrongs. The legal issue is not only whether the individual official in question should be held responsible for the wrong but also whether the government which employs that official should be made to pay for the harm caused. The principle of vicarious liability offers a legal basis for holding an employer responsible for certain wrongs carried out by an employee within the course of their employment. In the case of the State, however, this leads to questions which are not exactly the same as those that occur in normal private employment. The government carries out functions linked to public authority, such as policing, detention, taxation and regulatory enforcement. It might therefore claim that liability for actions relating to these functions would interfere with the fulfilment of public duties or subject public funds to excessive claims. The other side of the argument is just as strong. Although the State has powers and institutional facilities that are not available to ordinary people, when it uses staff to exercise coercive authority it should not normally be allowed to pass on to the person who has suffered the misconduct all the financial cost of that misconduct. Public authority must not be seen merely as a source of state power; it also implies a responsibility to act lawfully when using that power. The situation in Indian law shows an ongoing tension between these factors. In the case of *State of Rajasthan v. Vidyawati* the Supreme Court agreed that the government could be held vicariously liable for negligence on the part of a government driver who was carrying out his duties. In *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, on the other hand, the Court did acknowledge a type of immunity connected with the exercise of sovereign powers. Subsequent rulings, especially *N. Nagendra Rao & Co. v. State of Andhra Pradesh*, cast doubt on the reason for having broad sovereign immunity. At the same time, legal remedies based on Articles 32 and 226 were developed, allowing the courts to grant compensation in certain cases where fundamental rights had been violated without allowing sovereign immunity to block the remedy. In some types of cases protection has been enhanced but a fully consistent body of law regarding State tort liability has not yet been established. A claimant may still be unsure whether to go for a regular civil action, a petition for a constitutional writ or some other statutory remedy. The legal outcomes will depend on how the governmental function is characterised, the kind of right

that has been violated and the procedural route chosen. The article looks at the development and the limitations of state vicarious liability in India and contends that a reasonable framework should take ordinary employment-related tort liability as the general rule, limit immunity to certain situations which are justified by legitimate public interests, and keep constitutional compensation as a separate remedy in the case of violations of fundamental rights.

---

## Research questions

The article addresses four principal questions:

1. What manner of development has Indian law experienced with regard to the principles which govern the vicarious liability of the State?
2. How far does the principle of sovereign immunity still apply after the establishment of constitutional compensation?
3. What problems occur due to the fact that private-law tort remedies and public-law constitutional remedies exist together?
4. What statutory and institutional reforms could make state liability more predictable, more accessible, and in line with constitutional accountability?

## Research objective

The aims are to study the legal and doctrinal basis of State liability, assess important judicial decisions, discern normal tort liability from constitutional compensation, detect ongoing legal ambiguities, and suggest reforms that can help make it easier to achieve effective remedies.

## Research methodology

This article uses a doctrinal legal research methodology. It analyses constitutional provisions, Supreme Court rulings and the First Report on Liability of the State in Tort by the Law Commission of India (1956) to explore shifts in judicial reasoning regarding sovereign immunity, employment-related responsibility and constitutional remedies. The cases are considered chronologically and thematically. The article is more analytical than empirical, providing no figures on prevalence of claims, compensation awarded or performance of government claims processes based on original field data.

---

## Conceptual Foundations of State Vicarious Liability

### *i) Meaning and rationale of vicarious liability*

Vicarious liability is a concept under which one person may be held liable for the wrong committed by another person on the basis of a legitimate connection between the persons. In the context of employment relationships it usually means that the employer is held responsible for the tort committed within the scope of employment under the applicable principles of allocation of responsibility and the relevant defences.

The doctrine should be distinguished from direct or personal liability, which can arise out of the negligence in the recruitment, training, supervising or management function of the employer or his or her independent breach of duty towards the claimant. Vicarious liability focuses on the allocation of the employee's tort because of the employment relationship and the connection with the employment-related functions.

There are several reasons for the doctrine. First, the employer controls and benefits from the activities which generate the risk. Second, the employer can allocate the loss by insurance, budgeting or other financial arrangements. Third, the liability doctrine fosters the proper recruitment, training and supervision. Finally, the doctrine prevents the situation when an innocent victim bears the costs of risks which were created by an institutional activity and are attributable to a particular agent who does not have sufficient resources.

These considerations are particularly relevant to governmental employment. Public officials often perform functions which could not be exercised by private individuals, such as arrest, detention, seizure, inspection and enforcement. The government chooses the institutional framework within which the activities take place and the responsibilities and procedures are determined by the State. Therefore, it is logical to require the State to respond for torts which are significantly connected with the performance of the institutional functions.

On the other hand, the governmental liability cannot be applied mechanically to every action of every public employee. The claimant must prove the relevant legal elements: the right to sue and the connection between the conduct and the employment or public function under the applicable tests of liability. The private act of an agent which does not use or abuse the public function in any way may present a different issue than the abuse of power committed while performing the assigned tasks.

### *ii) Sovereign immunity and the Indian constitutional setting*

Sovereign immunity has long been understood as the idea that a sovereign cannot be forced into legal actions or held responsible like an ordinary person. In England this was based on the common-law rule that the Crown could do no wrong. That meant people could not bring claims against the Crown. This changed in the United Kingdom with the Crown Proceedings Act 1947. That law created a system for allowing civil cases to be brought against the Crown.

In India the situation was different. Indian courts looked at government liability by using rules from the time of the East India Company and the British colonial government. The Constitution did not create a set of rules for when the government can be sued for damages caused by negligence or mistakes. Instead it left this to be interpreted through Article 300<sup>1</sup>.

Article 300(1) says that the Government of India can sue or be sued using the name of the Union of India. Similarly a State government can act in the name of the State.. This is only true within the limits set by the Constitution and other laws. The article also ties the government's ability to be sued to the situation that existed before the Constitution was made.

So Article 300 is important.. It should not be seen as a full set of rules for when the government can be held responsible for harm. It mainly deals with who can be sued and under what name. The actual rules that decide if someone can claim damages come from laws and court decisions.

#### 1)Article 300 of Constitution of India , 1950

Today this old way of thinking still causes confusion. Governments now do things—some might seem like public duties, like running schools or hospitals while others look more like business activities like managing power plants or transport systems. The old idea that some government actions are "sovereign" and others are not does not always make sense. Just because an action is carried out under government authority does not mean it should be treated differently in court.

A better way to look at this is to focus on the nature of the harm the connection between the person's job and the action and what public interest is involved. The fact that a government official was acting under a law should not automatically mean they cannot be held responsible if they acted carelessly or wrongly. The law should not shield the government simply because a function is called official. The focus should be, on what happened, not on the title of the job.

---

## Constitutional and Legal Framework

### i)Article 300 of the Constitution

Section 300 gives the power for legal actions involving the Union and the States. Its main role is to keep the idea that governments can be sued in court. It also allows for questions about who's responsible to be settled under the law.. Section 300 does not lay out a full system. It does not say what kinds of wrongs can lead to a claim what counts as work done by an employee what defenses might be allowed or how to get compensation.

This lack of rules is exactly what is causing the debate. When the Constitution was made there was no law on government responsibility for civil wrongs. Instead older legal ideas were kept. This left the courts with the task of mixing legal principles with the Constitution's values and the needs of today's government.

In its report *Liability of the State in Tort* (1956) the Law Commission of India admitted that the area was unclear. It looked into whether new laws were needed. This shows that the issue is not new. When the country was young people saw that a clear legal framework was necessary. The need, for rules was recognized early.

### ii)Articles 32 and 226<sup>2</sup>

Articles 32 and 226 offer ways to seek constitutional redress. Article 32 allows the Supreme Court to enforce rights. Article 226 gives High Courts the power to issue writs orders or directions to enforce rights and for other related purposes under the Constitution.

These remedies are especially important when the State acts in a way that violates rights. This is often the case with rights protected under Article 21. In some situations courts have awarded money compensation when simply declaring a right has been violated or releasing a person who was detained illegally would not be enough to fix the harm.

Constitutional compensation is not the same as ordinary damages in tort law. In a tort case the person claiming damages must prove certain elements like fault or negligence.

---

#### 2) Article 32 and 226 of Constitution of India,1950

A constitutional compensation claim is different. It deals with the public-law effects of violating a right. It also looks at the court's authority to give effective relief.

This difference was clearly explained in the case of *Nilabati Behera v. State of Orissa*. The Supreme Court said that compensation under Articles 32 and 226 for violating rights is a public-law remedy. It is based on liability, which means the State can be held responsible even if there was no fault. Sovereign immunity does not block this kind of relief. The Court also said that constitutional compensation is separate from private-law claims for damages. It can even exist at the time as such claims.

This distinction matters a lot. It keeps the rules of tort law from taking over in constitutional cases. It also means that winning a case for compensation does not automatically settle all issues, about private-law damages. For example it does not cover all kinds of losses that might be caused by the violation.

**iii)Article 21<sup>3</sup>**

Article 21 says that no person can be denied life or personal liberty unless the law allows it. Courts have interpreted this right as a tool for checking unlawful arrests torture in custody and other serious abuses by the state. These cases are not about one officer's actions. When someone is wrongly detained or suffers harm under state control it can show problems in how public power is managed. It can also reveal weaknesses in the systems meant to protect rights.

Compensation in these cases is not the same as damages. It shows the state has broken a promise. Money can help make sure the right to liberty is actually protected. It also sends a message that the state must follow the law when using its power.

Not every mistake by a government worker leads to constitutional compensation. Whether someone gets money depends on the right involved the facts of the case how serious the violation. The rules, for handling constitutional cases. A small mistake or carelessness may be dealt with under law even if it does not rise to the level of a constitutional wrong.

---

**Judicial Evolution of State Liability in India**
**1)State of Rajasthan v. Vidyawati (1962)<sup>4</sup>**

In this case , the Supreme Court looked at whether the State was liable for a government driver's negligence. A government vehicle, driven by an employee while on duty caused a fatal accident. The question was whether the State could be held responsible for the employee's conduct. The Court accepted the State's liability. Its reasoning rejected the idea that the government automatically enjoys the immunity of the English Crown. The Court stressed that a constitutional republic with administrative duties cannot simply because it is public claim a blanket exemption from the normal consequences of employment-related negligence.

-----  
3) Article 21 of Indian constitution ,1950

4) State of Rajasthan v. Vidyawati AIR 1962 SC 933

Vidyawati matters because it treats the State as an employer that can bear responsibility for the torts of its employees. Governmental status does not defeat the claim. The judgment says that when a public employee commits a tort during work the State may be held liable on the same principles that apply to other employers. The case also illustrates a point. A government driver who performs transport duties does not exercise a sovereign power just because the vehicle belongs to the government. The relevant conduct can be judged by principles of negligence and employment. However the decision did not settle liability for all types of government activity. The scope of liability becomes contested when a tort is linked to police powers or another function that is traditionally described as sovereign. That question surfaced in the decision, in Kasturi Lal.

**2)Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh (1965)<sup>5</sup>**

In this case , gold property was taken by police officers. Later stolen by a police officer. Kasturi Lal wanted the State to give back the gold. The Supreme Court said that torts made when the State uses its power are different from torts that happen when the State does not use official power. The Supreme Court said that Kasturi Lal's claim was a tort made with State power and that the State was not liable according to the law at that time. This decision became a source for the sovereign-function exception in Indian tort law. The reasoning said that the nature of the job done by an employee could decide whether the State would be held responsible. People have criticized the judgment because of the real-world effects of its approach. The gold was lost inside a police institution that had taken control of it by law. From Kasturi Lal's point of view the loss happened because of the police relationship that ought to have kept the gold safe. The difference between non-sovereign work therefore might make Kasturi Lal's remedy depend on the label used for the work instead of on what was wrong or how the gold was kept. Another worry is that using force can create need for accountability. A person whose gold is taken by police cannot negotiate how the gold will be kept or pick the institution that will guard it. Giving immunity in such cases may put the risk of police failure on the person who is least able to stop it. Still Kasturi Lal remains important for an understanding of the doctrine. Kasturi Lal cannot just be ignored because newer decisions have limited the reach of immunity in constitutional compensation cases. This judgment dealt with a civil claim for lost gold not with the later constitutional remedy, for a clear violation of fundamental rights. Its ongoing importance must be looked at together with decisions not seen as always controlling or completely replaced.

**3)Rudul Sah v. State of Bihar (1983)<sup>6</sup>**

In the case, Rudul Sah remained in prison for than fourteen years even after the court said he was innocent. The Supreme Court looked at the issues of keeping someone in jail when there is no legal reason to do so. The Court's action showed that a constitutional remedy does not always stop at freeing a person from imprisonment. If someone has already faced a breach of personal freedom simply ordering their release may not fix the harm.

-----  
5) Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh, AIR 1965 SC 1039

6) Rudul Sah versus State of Bihar 1983 4 SCC 141

So the Court said that money compensation can be a part of the constitutional solution. The importance of Rudul Sah goes beyond the facts of the case. It helped shape the idea of compensation for serious violations of basic rights. It also showed that holding the government accountable can need more

than saying that officials acted unlawfully. The decision has to be seen in the context of constitutional jurisdiction. It did not say that every case of government carelessness gives a person a right to money under Article 32 or Article 226. Instead it helped confirm that money relief can be fitting when a serious breach of a right has happened and pay is needed to make the remedy work. In the way the state's responsibility has changed Rudul Sah became a moment that moved the focus from just ordinary civil damages, to the duties that arise when the state does something unconstitutional.

#### 4) *Saheli v. Commissioner of Police (1990)* <sup>7</sup>

In this case, the Supreme Court considered a claim involving the death of a child following police violence. The Court directed the payment of compensation by the State. The judgment reinforced the proposition that the State may be required to compensate victims for acts committed by police personnel in the course of their functions. It also demonstrated that responsibility for misconduct cannot be assessed solely by asking whether the immediate wrongdoer personally committed a tort. The institutional setting mattered. Police officers exercise authority on behalf of the State and members of the public are entitled to expect that such authority will be exercised within limits. Where police conduct causes harm the State's responsibility is connected to the relationship between the officers' functions and the injury inflicted. *Saheli* is significant in the transition from the employer-liability reasoning of *Vidyawati* to the constitutional compensation principles clarified in *Nilabati Behera*. It illustrates the role of compensation in addressing injuries associated with the misuse of public authority. The case also raises a policy question: whether payment from public funds unfairly burdens taxpayers when the immediate wrongdoer is a public official. That concern should not be resolved by denying compensation to the victim. Instead a coherent statutory framework could distinguish between the State's obligation to compensate an injured person and any subsequent proceedings against an official where personal misconduct, bad faith or another relevant basis for recovery is established. Such an approach would protect the victims' access to a remedy without treating compensation as a substitute, for appropriate individual accountability.

#### 5) *Nilabati Behera v. State of Orissa (1993)* <sup>8</sup>

In this case, the Supreme Court made a distinction between compensation in private-law tort cases and compensation in public-law cases involving violations of fundamental rights. The case dealt with a death that happened while a person was in police custody. It raised the issue of who bears responsibility when the State fails to protect a citizen's rights.

---

7) *Saheli A Womens Resources Centre v. Commissioner of Police (1990)* 1 SCC 422

8) *Nilabati Behera v. State of Orissa (1993)* 2 SCC 746

The Court said that when a person gets compensation under Articles 32 and 226 of the Constitution for a violation of rights that compensation is not based on a private-law claim. Instead it is a public-law remedy. This type of compensation is awarded on the basis of liability. That means the State cannot argue that it had no fault or intent. The violation itself is enough to justify compensation. Even if the doctrine of immunity could be used as a defence in a regular civil case it cannot stop a constitutional remedy. Sovereign immunity does not apply in proceedings because the right to life and personal liberty is not something the State can simply ignore or excuse. This case is one of the important milestones in the development of Indian law on State liability. It shows that there are two ways to seek justice when the State causes harm. The first way is through a private-law tort claim. Here the focus is on the actions of government employees and the claim is judged by the rules of tort law. This includes proving negligence, duty of care, causation and damages. The State's liability in cases depends on the legal framework that applies to torts and the rules about government responsibility. The second way is through a remedy. If the State or its officers act in a way that violates rights. Like the right to life, liberty or equality. Then the court can award compensation as a matter of public law. The basis for this compensation is the breach of the Constitution not the relationship between employer and employee. Because of this distinction constitutional compensation is not enough to replace a law on State tort liability. Many harms caused by government negligence do not rise to the level of a violation. For example damage to property due to road maintenance accidents involving government vehicles or mistakes in administrative decisions may be covered by private-law rules. But they may not involve a violation of rights so they would not trigger a constitutional remedy. So the decision in *Nilabati Behera* strengthens accountability under the Constitution. It allows people to get relief for violations of their rights. It does not create a full system of compensation for all forms of State wrongdoing. That larger job. Making a consistent law, on State liability. Remains to be done by the legislature.

#### 6) *N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994)* <sup>9</sup>

In the case, the Supreme Court looked at how the State is responsible when public authorities take goods and fail to keep or return them. The Court carefully reviewed why a broad sovereign-immunity rule might be justified in a system where the government does many regulatory and administrative tasks. The Court said that the State should usually be held responsible for acts by employees who act while on the job except in the few cases where immunity is truly valid under the law. The judgment matters because the judgment questions whether distinctions from a time when the sovereign's legal role was very different from that of an ordinary employer still fit today. Modern government is not limited to a narrow sovereign powers. It does different activities and many of those activities bring risks similar to those in private businesses. The Court's reasoning also points to a practical look at immunity.

---

9) *N. Nagendra Rao & Co. V. State of Andhra Pradesh, 1994* 6 SCC 205

The key question is not whether an act was done under a law but whether the specific government job and the circumstances make it right to exclude normal liability. If every act linked to a duty were immune the exception could grow to cover a large part of public administration. The decision did not create a statutory code or solve every doctrinal problem that came from *Kasturi Lal*. Its importance lies in the Court's criticism and limitation of immunity

not in making a full legislative plan. Together Vidyawati, Kasturi Lal, Rudul Sah, Saheli, Nilabati Behera and N. Nagendra Rao show a shift toward accountability, by the government. These cases also explain why the current system is still split: private-law tort rules old immunity doctrines passed down from history and constitutional remedies have grown in separate ways.

## **Critical Analysis of the Existing Legal Position**

### ***i)The uncertainty of sovereign and non sovereign functions***

I see that the sovereign-function distinction remains problematic because it does not always give a way to decide claims. Government work often mixes power with normal tasks. Police officers may use powers while also doing everyday jobs such as holding property keeping records or controlling vehicles. Public officials may have to make authorised decisions yet they may carry out those decisions with negligence. When liability relies heavily on the broad category of the institution or its general purpose injuries that are materially the same can lead to different outcomes. A claimant hurt by conduct may find a different legal position depending on whether the employees activity is called sovereign, commercial, administrative or operational. I think a coherent approach would examine the real function, the kind of conduct the link between the wrong and the employment relationship and the exact reason given for immunity. Statutory authority alone should not decide the matter. Having a power to act does not automatically make every use of that power right. I also believe that a statutory framework must recognise that some decisions involve policy choices or the distribution of scarce public resources. A law of State liability should separate a challenge to the merits of a high-level policy decision from a claim that an official carried out that decision, with negligence or unlawfulness. This separation could protect public administration without giving a blanket exemption to conduct simply because it happens inside government.

### ***ii)The gap between constitutional compensation and ordinary tort remedies***

Constitutional compensation protects people when their fundamental rights are broken.. Constitutional compensation does not make ordinary tort remedies unnecessary. To bring a claim the claimant must show a strong reason to use the court's public-law power. The claimant must prove the violation and show that money relief fits the situation. If the case has negligence, causation or evidence that is disputed the claimant might need the detailed fact-finding steps of a normal civil case. On the hand a claimant can build a normal tort case without proving a fundamental-right violation. For instance if government property is poorly maintained negligence can lead to money loss or bodily injury when constitutional compensation is not warranted. Thus constitutional compensation and ordinary tort remedies are complementary not interchangeable. Constitutional compensation handles the public-law effects of constitutional wrongs. Private-law damages deal with wrongs that can be acted on under the existing law. A clear statute must keep this difference separate. It must also explain how money paid through one path is counted when the claimant takes another path, for the injury. This way the law stops recovery while still keeping constitutional relief important.

### ***iii)Access to justice and procedural complexity***

The fragmented nature of State liability can put burdens on claimants. A person must find the defendant decide the proper legal path set the correct limitation period gather evidence and satisfy the procedural rules of the chosen forum. These tasks become very hard when the documents, staff and records are kept by the government. A claimant who is hurt while in custody or after an official seizure may not get the access to the evidence needed to rebuild the event. A fair State liability system should not take every claim against the State as fact. Government departments must have a chance to argue why they caused the harm, how much they owe and what the amount is. Procedural fairness is more than a right to sue. It also needs a chance to get the right evidence and to make the claim clear. Clear laws, claim procedures, open record keeping and thoughtful decisions could cut down on needless disputes. They could also help government departments settle claims without forcing every claimant to go through long court battles.

### ***iv)Compensation and individual accountability***

An award against the State does not automatically decide if the individual official should face discipline, criminal charges or other legal actions. Those questions use legal rules and goals. Compensation is meant to fix the claimants injury. Discipline looks at whether the official met their service duties. Criminal law decides if the official is guilty under the law. Personal recovery by the State when the law allows asks if the official must pay back the government for losses from misconduct. Mixing these matters can weaken accountability. If the State stops payment until individual cases finish victims may wait longer. If the State pays without checking misconduct the government may not learn lessons or deter bad acts. A better way is to keep the victim's claim from later accountability cases. The State should decide liability under the law and handle personal responsibility through just procedures. Any recovery from an official must follow the law and safeguards; it should not be assumed just because the State paid compensation.

### ***v)Public funds and responsible governance***

A common objection to State liability is that compensation comes from public funds. This worry is worth thinking about. It does not give a blanket excuse from civil responsibility. Public funds already run government offices keep property and run services. Paying for injuries caused by government is another part of work. Made liability rules can push for prevention, better supervision and show the costs of avoidable harm. A law system could also tell apart claims of carelessness from those of serious or deliberate wrongdoing. It could give rules, for settlement ask for thoughtful decisions and keep proper audit and report systems. The goal should not be to raise compensation no what. It should be to share losses by clear rules keep real public roles and make sure people hurt by wrong government actions have a real way to get help.

## The Need for Legislative Reform

The development of State liability in court has progressed,. A complete written law is still needed. The Law Commissions First Report on Liability of the State in Tort submitted in 1956 offers a historical basis for this proposal. It looked at the law and thought about new rules to make State liability in tort clearer. A modern framework should not simply copy categories. It should set rules that fit a republic where public bodies do many jobs and people need real ways to get help from unlawful or careless administration.

### *i) A general rule of State liability*

The law should set an assumption that the Union and the States are responsible for harmful acts done by their employees while working, as long as there are clear legal rules and exceptions. The rule should work in government work and not rely on a wide idea of sovereignty. It should keep the rule that the employees' actions must have a link to their job. It should also keep the rules about cause, damage, defenses and what makes a claim. This does not mean the State pays for every act done by a public employee. It means that the State will be judged by rules instead of the uncertain idea that a public job automatically means no responsibility.

### *ii) Defined exceptions*

Any legal exceptions must be clear and backed by real public interests. The law could treat top-level policy choices separately from ordinary mistakes while avoiding blanket protection for acts just because they involve legal powers. The law should show that an official's power to do a job does not automatically protect them from work or unlawful treatment of people affected by that job. When an exception is said the State must name the reason and explain how that act fits. Constitutional compensation for violations of basic rights must stay safe from any normal tort immunity. This protection is needed to keep the rule set out in Nilabati Behera.

### *iii) A transparent claims procedure*

The law should set up a way for people to file and check claims against the State. This way could have claim forms, clear times written explanations for decisions proper showing of records and a route for an outside review. An admin claim process should help settle cases not add a wall before a person can go to court. How it works and whether it must be used first should be spelled out with right exceptions for urgent rights help and other times when court help must stay quick. The process should also have plans for weak claimants and for cases where most evidence is kept by the State.

### *iv) Coordination between law and private-law compensation*

The law should clearly say that constitutional help and normal tort money have different legal bases. It should explain how courts and claim bodies can look at help when deciding later money for the same hurt. The goal is to stop payment for the same loss while not making a constitutional award wipe out every private claim. Any change should depend on what the first payment was for and the rules that apply. v) Accountability, insurance and institutional learning

The State must keep systems for writing down tort claims, money paid and types of incidents that keep happening. Grouped reports could find patterns with police custody, State cars, public buildings, detention centers and how seized property is handled. The aim of these reports is to stop problems well as to manage money. Many claims from the mistake may show that better training, new rules, better gear or tighter oversight is needed. The law could also give permission for insurance or shared risk plans, for certain State activities where that fits public money rules.. Insurance must not lower constitutional duties or stop accountability for big wrongs.

## A Proposed Framework for Determining State Liability

The following model is suggested as a way to think about how laws and courts should handle cases where the State might be held responsible. It's not a law in place but a tool for better reasoning.

i) First find the wrong that can be acted on : The person making the claim must show there was a wrong. Like a tort. Or in a constitutional case a clear violation of a right that the court can fix.

ii) Second check the job connection: We need to ask if the action was linked to the person's duties. Just being an employee doesn't automatically mean the State is liable.. If an official misuses their power that doesn't automatically mean the State is off the hook either. The connection has to be real and meaningful.

iii) Third look for any exceptions: The State must clearly say which exception it's using and why. Saying "we are sovereign" or "we were acting under a law" isn't enough on its own. The reason must be strong and specific.

iv) Fourth figure out what kind of remedy is being asked for: Is this about damages in a tort case?. Is it about constitutional compensation?. Something else? Each type of remedy has its rules and process. We must treat them separately.

v) Fifth decide on compensation. What comes next: We need to look at cause and effect the kind of harm done what losses can be recovered and if any payments have already been made. Then separate questions. Like whether the official should be punished or have to pay. Must be handled through their procedures.

This framework has three benefits. It makes reasoning clearer. It focuses on what happened not just labels like "government" or "State.". It keeps constitutional accountability separate from private-law claims.

---

## Original Recommendations

The analysis above leads to these suggestions.

**1.Pass a law on government tort liability :** Parliament should create a unified law for the entire country. It should also take into account how States might handle things and respect powers. The law should explain how Article 300 existing tort rules and government responsibility fit together.

**2.Make employment-based liability :** the normal rule The State should usually be liable if a wrong was done while an employee was doing their job. This should be the default with exceptions and proper legal conditions.

**3.Limit immunity with clear rules:** Exceptions must be narrow. Tied to real public needs. Just doing a job that's covered by a law shouldn't be enough to avoid responsibility.

**4.Keep compensation as a separate remedy:** The law should clearly say that if someone's fundamental rights are violated the State can't hide behind immunity. Courts under Articles 32 and 226 must be able to award compensation when needed.

**5.Set up fast ways to file claims:** Government offices should have steps for receiving, checking and deciding claims. At the time people should still be able to go to court for urgent constitutional issues.

**6.Make it easier to get records:** The system should require keeping records explain why documents are shared or not and protect evidence from being lost. Sensitive material can be kept private. Only if legally allowed.

**7.Separate paying victims from punishing officials:** A victim shouldn't have to wait for criminal or disciplinary actions to finish before getting compensation. These should be handled separately with clear rules.

**8.Require public reports:** Government bodies should publish summaries. With personal details hidden. Of how many claims were made, settled or decided and what kinds of problems keep happening. This can help improve laws and policies.

**9.Review the law regularly:** An independent group should check every years whether the law still matches constitutional decisions works for public administration and helps people get justice easily.

These ideas aim to balance two goals: helping people who've been harmed by government actions and letting public institutions do their jobs without constant fear of lawsuits. A clear law would do both better than the mix of old immunity rules and court decisions made one at a time.

---

## Conclusion

In India the rules about when the State can be held responsible have grown over time. They come from tort laws the Constitution and court decisions that recognize the need for public accountability. The case *State of Rajasthan v. Vidyawati* said the State can be liable for employee negligence during work. Then *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh* added a limit. If the official was doing an act the State might not be liable. Later cases like *Rudul Sah Saheli*, *Nilabati Behera* and *N. Nagendra Rao* made it clear that even government power can't protect officials from consequences if they act wrongfully. The key point is this: there's a difference between being held responsible under law (like torts) and being held accountable under public law (like constitutional rights). Courts can award compensation for violations and immunity can't block that.. Not every harm, from government action is a constitutional violation. Some are ordinary torts. Without a law things stay unclear. It's hard to tell which government acts are protected and which aren't. The process can also be too complicated for ordinary people to use. A law should make employment-based liability the rule define exceptions carefully protect constitutional remedies and make claims easier to handle. In the end the State must be held responsible when it acts wrongly. Public power means duty. Government can do its work but it shouldn't get to ignore the harm it causes. A clear open system of liability will help people get justice make administration better and keep the promise of a government that answers to the people.

---

## Reference

### 1) Reports

i) LAW COMMISSION OF INDIA, LIABILITY OF THE STATE IN TORT, FIRST REPORT (1956).

### 2) Supreme courts decision

i) *State of Rajasthan v. Vidyawati*, AIR 1962 SC 933.

ii) *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, AIR 1965 SC 1039.

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

iv) *Saheli, A Women's Resources Centre v. Commissioner of Police*, (1990) 1 SCC 422.

v) Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

vi) N. Nagendra Rao & Co. v. State of Andhra Pradesh, (1994) 6 SCC 205.

### **3) Books**

i) The Constitution of India, 1950 (as amended by The Constitution 106<sup>th</sup> Amendment Act, 2023)

ii) C.K. Takwani's Lectures on Administrative Law (2012), Fifth Edition, EBC Publishing (P) Ltd.

iii) Dr.R.K. Bangia's Law of Torts (2010), Twenty Third Edition, Allahabad law agency law publishers.