
STATE LIABILITY IN TORT AND SOVEREIGN IMMUNITY IN INDIA: FROM JUDICIAL DOCTRINE TO CONTEMPORARY CHALLENGES

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ABSTRACT

This paper examines the law of State liability in tort under Article 300 of the Constitution of India. It focuses on sovereign immunity and State accountability. The paper first explains the historical and constitutional foundations of State liability. It then examines its development through cases such as *Vidyawati*, *Kasturi Lal* and *N. Nagendra Rao*. It also studies constitutional tort through cases such as *Rudul Sah*, *Saheli* and *Nilabati Behera*.

The paper then applies these principles to three different contemporary situations. The *Jantar Mantar/NEET* protests examine direct State action, particularly the alleged use of excessive police force. The *RCB victory celebration stampede* examines State responsibility for regulatory and public-safety failures involving a private event. The *PPP* section examines delegation of a non-sovereign public function to a private entity and whether such delegation affects State liability.

The paper finally checks whether the existing framework is coherent and whether a comprehensive State Liability Act is needed. It finds that judicial decisions have significantly narrowed sovereign immunity, but important questions about the scope of liability, compensation and delegated functions remain. The paper therefore examines whether legislation can provide greater clarity while preserving necessary protection for core sovereign functions.

INTRODUCTION

Sovereign immunity in Indian tort law refers to the protection claimed by the State against liability for certain acts performed in the exercise of its sovereign functions. This concept of sovereign immunity is rooted in the legal maxim ‘rex non potest peccare’ which translates from Latin to ‘the king can do no wrong’. Now comes the question, what exactly are sovereign and non-sovereign functions? This question was answered by the Calcutta Supreme Court in 1861 in the case of *P. & O. Steam Navigation Co. v Secretary of State*¹. Sovereign functions were defined as ‘powers which cannot be lawfully exercised except by a sovereign, or private individual delegated by a sovereign to exercise them’². In simpler words, functions which are uniquely governmental such as defence, maintenance of law and order, administration of justice, police powers, collection of taxes, etc. are called sovereign functions. On the other hand, functions that could also be performed by private persons/entities such as commercial services, transport, employment/industrial activities, etc. are known as non-sovereign functions. So, from these definitions, it can be concluded that the Indian Armed Forces, Police, Income Tax Department, etc. come within the ambit of the sovereign functions of the Indian government whereas Indian Railways, PSUs (such as SAIL, Coal India Limited, BHEL, etc.), financial organisations such as RBI and SEBI come under the non-sovereign functions of the Indian government.

It is clear that the state performs a variety of functions ranging from coercive functions such as defence and policing to welfare functions such as transportation, healthcare, education and infrastructure. Then the question arises that if the state commits tortious acts while executing these sovereign and non-sovereign functions then should the ordinary principles of tort liability apply in the same way to the state as it applies to individual entities? This project does not seek to resolve this tension but to examine, through the case law and its contemporary application, whether this tension is capable of resolution. Essentially, the primary research question of the project is: *Does the doctrine of State Liability under Article 300, as it has evolved through the sovereign-function test and constitutional tort jurisprudence, provide a clear and sufficient framework for holding the state accountable for harm caused in its execution of its sovereign*

¹ *P. & O. Steam Navigation Co. v. Secretary of State*, 5 Bom HCR App. 1

² IJLLR Journal, *Sovereign V. Non-Sovereign Functions Of The State - A Legal Analysis With Case Laws*, IJLLR JOURNAL (Jan. 8, 2026), <https://www.ijllr.com/post/sovereign-v-non-sovereign-functions-of-the-state-a-legal-analysis-with-case-laws>.

and non-sovereign functions?

The Indian Jurisprudence on State Liability on tortious acts has developed from a broader form of state immunity to a more restrictive understanding of immunity through cases such as *State of Rajasthan v. Vidyawati* (1962)³, *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh* (1964)⁴, and *N. Nagendra Rao and Co. v. State of Andhra Pradesh* (1994)⁵. Cases such as *Rudul Sah v. State of Bihar* (1983)⁶, *Saheli v. Commissioner of Police* (1989)⁷ and *Nilabati Behera v. State of Orissa* (1993)⁸, have elaborated on the principles of Constitutional Tort. We will be discussing these cases in a more detailed manner further in the project. We will also apply the principles arising from these cases to contemporary issues such as the police excesses in the Jantar Mantar NEET Protest and stampede at Chinnaswamy Stadium, Bengaluru during RCB Victory Celebration and general questions such as can the government be held liable for a tortious act committed by a Public Private Partnership (PPP) enterprise.

The Doctrinal Foundation: Article 300 and Sovereign Immunity

I. Article 300 of the Indian Constitution

Article 300 of the Indian Constitution governs suits and proceedings involving the central and the state government. The exact wording of the Article 300 (1) of the Indian Constitution is as follows:

“The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.”⁹

As of this day, no act is enacted by the Parliament regarding sovereign immunity and suing the

³ *State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933.

⁴ *Kasturi Lal Ralia Ram Jain v. State of U.P.*, 1965 SC 1039 : (1965) 1 SCR 375.

⁵ *N. Nagendra Rao & Co. v. State of A.P.*, (1994) 6 SCC 205.

⁶ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

⁷ *Saheli v. Commr. of Police*, (1990) 1 SCC 422.

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

⁹ INDIA CONST. art. 300, cl. 1.

state. The concept of sovereign immunity in India has its foundation from the colonial era acts and has evolved from multiple Supreme Court judgements as listed above. The colonial era acts relevant here are: Section 65 of the Government of India Act, 1858 (outlines the provisions regarding legal proceedings and liability against the Secretary of State in Council)¹⁰; Section 32 of the Government of India Act, 1915 (set the rules for how the Secretary of State in Council could take people to court or be taken to court in legal disputes)¹¹; Section 176 of the Government of India Act, 1935 (governs legal suits and proceedings involving the federal and provincial governments)¹². Now we will discuss the Supreme Court judgements through which the concept of Sovereign Immunity in India evolved.

II. Evolution of Sovereign Immunity in Indian Tort Law

State of Rajasthan v. Vidyawati¹³

A jeep owned by the state of Rajasthan, due to the negligent and rash driving of the government-employed driver, hit a pedestrian and therefore fatally injured him. A torts claim was brought in against the state of Rajasthan. The state claimed sovereign immunity. The Rajasthan High Court ruled in the favour of the plaintiff. The state appealed the decision of the High Court to the Supreme Court. The question before the Supreme Court was whether State of Rajasthan could be held vicariously liable for the negligent actions of its employees. The Supreme Court upheld the High Court's decision and ruled that the State of Rajasthan is vicariously liable for the tortious acts committed by its employees within the scope of their employment. This judgement had a significant impact for administrative law, sovereign immunity and tort liability in India. It marked a departure from the old "King can do no wrong" doctrine, promoting greater accountability for governmental entities and serves as an important precedent for cases involving state liability¹⁴.

Kasturi Lal Ralia Ram Jain v. State of U.P.¹⁵

Kasturi Lal was a partner in the appellant's company that sold jewels. Kasturi Lal was arrested

¹⁰ Government of India Act, 1858, § 65.

¹¹ Government of India Act, 1915, § 32.

¹² Government of India Act, 1935, § 176.

¹³ Vidyawati, supra note 3.

¹⁴ Casemine Editor's Desk, *State of Rajasthan v. Vidyawati: Establishing State's Vicarious Liability for Tortious Acts of Its Servants*, [HTTPS://WWW.CASEMINE.COM](https://www.casemine.com), <https://www.casemine.com/commentary/in/state-of-rajasthan-v.-vidhyawati%3A-establishing-state%27s-vicarious-liability-for-tortious-acts-of-its-servants/view>.

¹⁵ Kasturi Lal, supra note 4.

on the suspicion of possessing stolen goods and the goods, which included certain amount of gold and silver, were confiscated. A few days later, Kasturi Lal was released on bail. After sometime, only the silver which was confiscated from him was returned while the gold wasn't. Despite repeated requests, his gold wasn't returned. So, he filed a law suit to recover the same. The defendants alleged that the chief constable of the warehouse where Kasturi Lal's property was stored, departed to Pakistan with the gold and other monies that he had stolen. The plaintiff argued that the State of Uttar Pradesh must compensate Kasturi Lal for the injury caused by the police personnel's carelessness. So, the question before the Supreme Court essentially was whether the State of UP was responsible for compensating the plaintiff for the damage caused by the carelessness of state employed public servants and does the principle of sovereign immunity exempt the State of UP from liability. The Supreme Court held in the favour of the defendant while acknowledging the irresponsible conduct of the policemen. The Supreme Court ruled that the conduct of the government employee did result in the claim for damages while on job. But their job involved exercising sovereign authorities and actions taken by sovereign authorities are immune from the claims of damages¹⁶.

N. Nagendra Rao and Co. v. State of Andhra Pradesh¹⁷

The plaintiff, N. Nagendra Rao and Co. was engaged in the business of fertilisers and foodgrains. In August 1975, the authorities seized large quantities of fertilisers and other goods from the premises under the Essential Commodities Act. Despite repeated requests of the plaintiff to dispose of or release the fertilisers before their condition deteriorated, no action was taken. When finally, the authorities released the stock, a significant portion of the seized goods had deteriorated. So, the plaintiff filed a law suit to claim the compensation for the loss he had to incur due to the negligence of the authorities. The state claimed that the authorities acted under their statutory powers so the state is immune from any liability thereof. The question before the Supreme Court essentially was whether the state can be held vicariously liable for negligence by its employees in discharge of the statutory functions. The Supreme Court ruled in affirmative. The court rejected the argument that the state can escape liability merely because its employees were exercising statutory powers. The court observed that: "No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act

¹⁶ Vedansh Raj, *Development of Vicarious Liability in India: Analysing the Case of Kasturi Lal v. State of Uttar Pradesh*, 4(2) Indian J. Legal Rev. 541 (2024).

¹⁷ N. Nagendra Rao, *supra* note 5.

in any manner as it is sovereign.”¹⁸ The court distinguished between primary/inalienable sovereign functions (sovereign immunity available, not absolute) and statutory functions that are merely incidental or ancillary (the officer may be personally liable and state may be vicariously liable). The court did not overrule *Kasturi Lal*, rather the Court narrowed *Kasturi Lal* to situations involving functions for which the State itself could not be sued.

Constitutional Tort and the Changing Idea of State Accountability

A constitutional tort is a form of state liability which arises when the government violates the fundamental rights of a person which are guaranteed by the constitution. The courts usually provide public law remedy, usually a monetary compensation. An ordinary tort involves the question “Was the conduct actionable under ordinary tort principles and can the state invoke sovereign immunity?” while a Constitutional tort involves the question: “Did the state’s conduct violate a constitutionally guaranteed fundamental right thus attracting liability and monetary compensation?”. The jurisprudence of Constitutional Tort in India has developed through the cases as mentioned below.

Rudul Sah v. State of Bihar¹⁹

Rudul Sah was tried before the sessions court at Muzaffarpur (Bihar). He was acquitted on 3rd June 1968. Despite his acquittal, he was not released. He had to stay in the jail for more than 14 years till 16th October 1982. Through a petition under Article 32 (writ jurisdiction of the Supreme Court), he sought his release and compensation for his prolonged and unlawful detention, along with expenses for medical treatment and rehabilitation. The state failed to give a plausible explanation for his continued detention. The Supreme Court allowed the writ petition under Article 32 and held that his prolonged detention even after acquittal was unjustified. The Supreme Court recognised that although Article 32 cannot be used as a substitute for civil monetary claims in ordinary cases, this case was exceptional as Rudul Sah had suffered a gross violation of his Right to Life and Personal Liberty under Article 21 and merely releasing him was not a sufficient remedy for that violation²⁰. The ratio of this case is essentially that the supreme court under its writ jurisdiction under Article 32 can award monetary compensation as a public law remedy for gross violation of fundamental rights where

¹⁸ N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205, 235, para 25.

¹⁹ Rudul Sah, supra note 6.

²⁰ Id.

compensation is necessary to provide adequate remedy. The Supreme Court also held that this remedy was under the Article 32 of the Constitution and the aggrieved party can pursue a separate civil claim for damages.

Saheli v. Commissioner of Police²¹

Kamlesh Kumari was a tenant in Delhi. She was being illegally evicted by her landlord to which she resisted. On 14th November 1987, the landlord along with the SHO, attacked Kamlesh Kumari and her son. Her son was fatally injured. Saheli, a women's rights NGO, filed a petition under Article 32 in the Supreme Court. The Court agreed that it to be an instance of abuse of authority by the police. The court held that her son died due to the injuries inflicted upon him during the assault by the SHO. The court directed the Delhi administration to give 75000/- INR as compensation. Although the court did not address sovereign immunity, its effect was that it broadened the ratio of *State of Rajasthan v. Vidyawati* to include sovereign functions such as policing under its ambit.

Nilabati Behera v. State of Orissa²²

Suman Behera, 22, son of Nilabati Behera, was taken into custody over the allegation of a theft on 1st December 1987. The next day, his mother got to know that he was found dead near railway tracks with multiple injuries. The police claimed that the accused had absconded from the police custody and became a victim of an accident. The District Judge concluded that Suman had died due to the injuries which were inflicted upon him while he was in police custody. The Supreme Court consequently held the State of Odisha liable to pay compensation to Suman's mother. This is a significant judgement in the jurisprudence of sovereign immunity in India. The Supreme Court distinguished between private law liability (ordinary action in tort law) and public law liability (arises when state action results in violation of fundamental rights). In case of private law liability, sovereign immunity may potentially be raised as a defence, but not in public law liability as in this compensation under Article 32/226 is based on the principle of Strict Liability²³. This case gave conceptual clarity to the framework Rudul Shah and Saheli were building towards.

²¹ Saheli, supra note 7.

²² Nilabati Behera, supra note 8.

²³ Id.

Testing the Doctrine Against Contemporary State Action

(i) Police Action and the Jantar Mantar/NEET Protests

On 20th July 2026, the Cockroach Janata Party (CJP) held a 'Sansad Chalo' march to the Parliament of India to protest against the NEET 2026 paper leak and demand the resignation of the in-office education minister of India, Dharmendra Pradhan. The protestors, multiple media outlets, on-ground journalists and human rights organisations allege that the protestors were met with brute and excessive force by the Delhi Police and RAF (Rapid Action Force). The police used tear gas, sticks and batons to disperse the crowd²⁴. Some sources also allege that the Delhi Police also used pellet guns. As per a committee formed in 2016 after the pellet-gun incident following Burhan Wani's death in Jammu and Kashmir, pellet guns should only be used in the rarest of the rare cases specifically when rioters turn violent, pose a direct threat to life, or endanger public safety installations²⁵. Allegedly, one of the protesters, Sheikh Irshad Mansoori, was hit by 40 pellets all over his body, including in critical areas like his eyes, neck, and face. He could have lost vision in his left eye had he not undergone surgery to remove the splinters²⁶. The Supreme Court has not, at this stage, finally determined that the police actually committed excessive force. It has ordered an enquiry to investigate these allegations²⁷.

Now we will have a look at these incidents from the lens of the cases and principles discussed in the previous parts. In *N. Nagendra Rao v. State of A.P.*²⁸ the Supreme Court explicitly included 'maintenance of law and order' under the primary and inalienable sovereign functions of a constitutional government for which the government can claim sovereign immunity. However, the state cannot claim sovereign immunity once the conduct "trenches into and encroaches on the fundamental rights of life and liberty"²⁹. So the question in this case arises: Does crowd control policing here count as ordinary law and order function (immune), or does the alleged excessive force convert it into a fundamental rights violation (not immune)?

²⁴ *CJP Protest: Video: Lathicharge By Cops, Chaos Ahead Of CJP's March To Parliament*, <https://www.ndtv.com/india-news/cjp-parliament-march-chaos-lathicharge-by-cops-ahead-of-cjps-march-to-parliament-11794248> (last visited Sept. 29, 2026).

²⁵ Vedaant Lakhera, *Pellet Guns, Surveillance, and the Delhi Protest Crackdown*, FRONTLINE (Aug. 10, 2026), <https://frontline.thehindu.com/politics/delhi-police-pellet-guns-sansad-chalo-protest/article71308918.ece>.

²⁶ *Id.*

²⁷ *NEET UG: 'We Will Not Re-Constitute High-Powered Committee,' Says Supreme Court* | Education News - The Indian Express, <https://indianexpress.com/article/education/neet-ug-protest-case-we-will-not-re-constitute-high-powered-committee-says-supreme-court-10872165/> (last visited Sept. 29, 2026).

²⁸ *N. Nagendra Rao*, *supra* note 5.

²⁹ *N. Nagendra Rao & Co. v. State of A.P.*, (1994) 6 SCC 205, 208, para 27.

In various rulings, the Supreme Court has interpreted the Right to Life to go beyond mere survival. In *Kartar Singh v. State of Punjab*³⁰, the Supreme Court held that Right to Life under Article 21 also includes right to live with human dignity and protection against torture and assault by the state. However, police can use reasonable force to maintain law and order. In *Anita Thankur v. State of Jammu and Kashmir*, the Supreme Court held that police cannot simply be prohibited from using force whenever a crowd has to be controlled. But the force must not be excessive, arbitrary and disproportionate³¹. In the proceedings following the 20th July action, the Supreme Court identified the examination of the proportionality of the use of force by the police as one of the issues. If the action is found disproportionate then it will open the route of Constitutional tort developed from cases such as *Rudul Sah*, *Saheli* and *Nilabati Behera* for victims like Sheikh Irshad Mansoori to get compensation as the action can be held violative of Article 21 (Right to Life and Personal Liberty) and Article 19 (Freedom of Speech and Expression).

(ii) RCB Victory Celebration Stampede

Royal Challengers Bengaluru (RCB) won their maiden IPL title on 3rd June 2025. The victory celebration of this victory was held the very next day i.e. on 4th June 2025 in and around the Chinnaswamy Stadium, Bengaluru. The celebration turned disastrous as a stampede occurred outside the stadium which resulted in the death of 11 while leaving more than 50 injured³². A two-judge bench of the Central Administrative Tribunal (CAT) observed that the RCB franchise was responsible for the gathering of around 3 to 5 lakh people outside the stadium on June 4 which resulted in the stampede. The tribunal also observed that the RCB franchise had created nuisance by holding the victory celebrations without seeking or getting necessary regulatory permissions³³. These observations were subsequently expunged by the Karnataka High Court³⁴. However, our objective in this paper is to establish principles which will help in

³⁰ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, para 397.

³¹ *Anita Thakur v. State of J&K*, (2016) 15 SCC 525, para 17.

³² *Bengaluru Stampede Case: What We Know so Far on RCB's Celebrations That Turned Catastrophic* | Cricket News - The Times of India, <https://timesofindia.indiatimes.com/sports/cricket/ipl/top-stories/bengaluru-stampede-case-what-we-know-so-far-on-rcbs-celebrations-that-turned-catastrophic/articleshow/121670873.cms> (last visited Sept. 30, 2026).

³³ *Bengaluru Stampede: Tribunal Observes RCB "created Nuisance" without Prior Permission*, CRICINFO, <https://www.cricinfo.com/story/bengaluru-stampede-tribunal-says-rcb-created-nuisance-without-prior-permission-1493000> (last visited Sept. 30, 2026).

³⁴ LIVELAW NEWS NETWORK, *Karnataka High Court Issues Notice On RCB's Plea To Expunge CAT Remarks Blaming It For Chinnaswamy Stampede*, (July 9, 2025), <https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-issues-notice-on-rcbs-plea-to-expunge-cat-remarks-blaming-it-for-chinnaswamy-stampede-296977>.

determining the liability of the state. The facts of this case are analogous to the facts of the case *M.C.D. v. Uphaar Tragedy Victims Association*³⁵. Both the cases (UPHAAR and RCB Stampede) involve a private entity (UPHAAR Theatre and RCB respectively), a government body (Municipal Corporation of Delhi and Government of Karnataka/Bengaluru Police respectively) whose negligence causes a tragedy (not directly). One of the issues of the case was essentially, can deficiency in the execution of a statutory and regulatory duty such as crowd control, public safety, etc. by a regulatory authority which causes an injury, result in state liability. The answer to this issue given in the judgement was: a regulatory authority is liable if its deficiency exists alongside mala fides/conscious abuse, or if it was directly negligent or the proximate cause³⁶. It is clear that the stampede was not a result of malafide intention or conscious abuse of power by the state. So to determine state liability this question needs to be answered: whether the stampede occurred due to a direct negligence by the state or was the state a proximate cause of the stampede?

(iii) Liability in Public-Private Partnerships (PPPs)

Public-Private Partnerships (PPPs) are collaborative agreements between government entities and private sector companies to finance, build, and operate projects that serve the public. These partnerships leverage the strengths of both sectors to deliver public services or infrastructure more efficiently and effectively³⁷. India implements the PPP model across aviation (examples: India Gandhi International Airport, Delhi operated via a joint venture between GMR Group, Airports Authority of India (AAI) and Malaysia Airports; Navi Mumbai International Airport developed via a PPP Model by Adani Airports³⁸), highways (example: Delhi-Meerut Expressway), railways, etc. Therefore, it is evident that PPP models exist usually for the non-sovereign functions.

From our discussion of the cases earlier, it is clear that the government can be sued for tortious acts committed by it in exercising the non-sovereign functions³⁹. The Supreme Court in *Zee Telefilms Ltd. V. Union of India*⁴⁰ held that the performance of public duties/state functions by

³⁵ *MCD v. Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481

³⁶ *Uphaar*, supra note 36, at 526-27, paras 55-56.

³⁷ *Public-Private Partnerships - Digital Transformation Collaborative Finance Toolkit - FactSheets*, <https://www.unesco.org/en/dtc-finance-toolkit-factsheets/public-private-partnerships> (last visited Oct. 1, 2026).

³⁸ VisionIAS, *Public-Private Partnership (PPP) Framework in India*, CURRENT AFFAIRS | VISION IAS (Jan. 22, 2025), <https://visionias.in/current-affairs/monthly-magazine/2025-01-22/economy/public-private-partnership-ppp-framework-in-india>.

³⁹ *P. & O. Steam Navigation Co.*, supra note 1.

⁴⁰ *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649

a private body was not enough to make it ‘the state’ under Article 12⁴¹. Therefore, private entities cannot be sued for constitutional tort. So, the question arises that whether the delegation of a non-sovereign function to a private entity eliminate the state’s liability. Let us ask this question with the help of an example. On 28th June, 2024, the roof of Delhi International Airport’s T-1 collapsed killing a cab driver and injuring 6 others⁴². As discussed earlier, Delhi Airport is maintained under a PPP. So, our question essentially is whether the delegation of the public duty (of maintaining an airport) to private entities, absolve the state of its liability for a tortious act. The principles laid down in *M.C.D. v. Uphaar Tragedy Victims Association*⁴³ can be relevant in determining the state liability. The PPP of the Delhi Airport is led by the private entity GMR group, which is also the direct operator of the airport (its role analogous to UPHAAR Theatre). Airports Authority of India (statutory body) plays the role analogous to the MCD. So, to determine the liability of the state, this question needs to be answered: Did the mala fide or direct proximate negligence of the Airports Authority of India cause the accident?⁴⁴

Assessing the Existing Framework and the Need for Legislative Reform

The Present Framework

As discussed earlier in the previous sections, Article 300 provides the constitutional basis for state liability but does not itself give a comprehensive state liability framework. The jurisprudence of state liability and sovereign immunity continues to be influenced by the colonial statutes such as Section 65 of the Government of India Act, 1858⁴⁵, Section 32 of the Government of India Act, 1915⁴⁶ and Section 176 of the Government of India Act, 1935⁴⁷. Landmark judicial pronouncements such as those in *Rajasthan v. Vidyawati* (1962)⁴⁸, *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh* (1964)⁴⁹ and *N. Nagendra Rao and Co. v. State of Andhra Pradesh* (1994)⁵⁰ have a significant contribution in the development of the state liability

⁴¹ Zee Telefilms, supra note 41, paras 29-31

⁴² P. T. I. News, *Cab Driver Killed, Six Injured after Portion of Roof Collapses at Delhi Airport’s T-1*, <https://www.ptinews.com/story/national/cab-driver-killed-six-injured-after-portion-of-roof-collapses-at-delhi-airport-s-t-1/1616997> (last visited Oct. 1, 2026).

⁴³ UPHAAR, supra note 36.

⁴⁴ Id.

⁴⁵ supra note 10.

⁴⁶ supra note 11.

⁴⁷ supra note 12.

⁴⁸ Vidyawati, supra note 3.

⁴⁹ Kasturi Lal, supra note.

⁵⁰ N. Nagendra Rao, supra note 5.

and sovereign immunity jurisprudence in India. Alongside this, the jurisprudence of Constitutional Torts has developed from landmark judgements in *Rudul Sah v. State of Bihar* (1983)⁵¹, *Saheli v. Commissioner of Police* (1989)⁵² and *Nilabati Behera v. State of Orissa* (1993)⁵³. Thus, it is evident that the much of the framework is created by judiciary rather than being codified by the legislature.

Incoherence in the Framework

In the existing framework, there is a lot of incoherence. Some of these are mentioned as follows. The first is the contradictory nature of the *Nagendra Rao* judgement. The judgement says that any watertight compartmentalisation of the functions of the state as sovereign/non-sovereign or governmental/non-governmental functions is not sound⁵⁴. But, in the very same judgement, the court allows immunity for law and order, defence and administration of justice⁵⁵. So the court philosophically rejects the classification of functions of the government but continues to apply it. The second issue also rises from the same judgement. As per *Nagendra Rao*, the only exception to the law and order immunity is the violation or encroachment on fundamental rights⁵⁶. But the NEET Protest section of the paper shows the ambiguity of this as we were not able to determine if the police action comes within 'maintenance of law and order' or is excessive and violation of Article 19 and 21. The third issue is regarding the quantum of compensation. In *Rudul Sah* and *Nilabati Behera*, compensations were awarded, however, the jurisprudence does not provide a methodology for determining the quantum of compensation in Constitutional tort. There are many such questions, doubts and ambiguities in the jurisprudence of state liability and sovereign immunity which are needed to be rectified in order to have a coherent framework.

Is a Comprehensive State Liability Act Needed?

In the *Nagendra Rao* judgement, the judges highlighted the issue of absence of a statute regarding state liability⁵⁷. It also mentioned the issue that due to absence of a post-independence statute, the courts had to follow the colonial statutes to determine the state liability

⁵¹ *Rudul Sah*, supra note 6.

⁵² *Saheli*, supra note 7.

⁵³ *Nilabati Behera*, supra note 8.

⁵⁴ *N. Nagendra Rao*, supra note 5, at 235, para 25.

⁵⁵ *N. Nagendra Rao & Co. v. State of A.P.*, (1994) 6 SCC 205, 235, para 27.

⁵⁶ *Id.*

⁵⁷ *N. Nagendra Rao & Co. v. State of A.P.*, (1994) 6 SCC 205, 235, para 34.

which was also detrimental to the national dignity⁵⁸. Therefore an act is very much needed to make the jurisprudence of state liability more coherent, predictable and citizen-friendly. The act will have to address issues such as circumstances in which the state is liable, exceptions and immunities, treatment of sovereign functions, liability for negligence and omissions, liability when the functions are delegated to private entities, relationship between ordinary tort remedies and constitutional remedies, quantum of monetary compensations, and many other such questions. However, legislative codification might make the law rigid. It is not possible for the legislature to anticipate all the new forms of circumstances. So in this case, the flexibility of the judiciary might be important. So the preferable approach may be to have the jurisprudence codified by the legislature but along with that, also give enough discretion to the courts to apply them in novel situations.

Conclusion

The law of State liability in India has come a long way from the traditional idea of sovereign immunity. The courts have slowly reduced the protection available to the State. Vidhyawati began this shift. N. Nagendra Rao further reduced the scope of sovereign immunity. Constitutional tort also created a separate remedy where State action violates fundamental rights. Cases such as Rudul Sah, Saheli and Nilabati Behera created the jurisprudence of Constitutional torts.

However, the existing framework still has important issues. The distinction between sovereign and non-sovereign functions is not always clear. The extent of immunity for law and order functions also become difficult to determine when State action affects fundamental rights. New forms of State activity, including regulation and Public Private Partnerships, create further questions about State responsibility.

The research therefore shows that judicial development has made State liability broader, but not completely clear or predictable. A comprehensive State Liability Act could provide clearer rules on liability, immunity, compensation and delegated functions. At the same time, such legislation should preserve enough flexibility for courts to deal with new situations. The central challenge is therefore to balance effective State accountability with the legitimate protection required for core governmental functions.

⁵⁸ Id.