
EXTENT OF GOVERNMENT LIABILITY IN TORTS UNDER INDIAN LAW

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ABSTRACT

Government liability in torts concerns state responsibility for the wrongful acts of its officials.

This paper outlines:

- The Introduction;
- Core Subject Matter analysis with Indian Constitutional Statute & other Statutes, Torts Maxims/ Doctrines, & Judicial Precedents;
- Comparative analysis of India vs. the US, UK, and EU countries; and
- Concludes with the Need for Reforms & Suggestions.

A brief of the paper is outlined below:

Article 300 of the Indian Constitution permits the government to be sued, and statutes like the CPC and Motor Vehicles Act regulate liability.

Courts differentiate between sovereign (military, judicial) and non-sovereign (commercial, welfare) functions, imposing liability only in the latter. However, this distinction remains inconsistent. Principles like *Respondeat Superior* (vicarious liability) and *Salus Populi Est Suprema Lex* (public welfare) influence judicial reasoning.

Landmark rulings such as *P&O Steam Navigation Co. (1861)* and *D.K. Basu (1997)* have gradually reduced sovereign immunity, promoting greater state accountability. However, the absence of codified laws creates legal uncertainty.

Globally, frameworks like the UK's *Crown Proceedings Act* and the US's *Federal Tort Claims Act* offer structured liability. India must adopt similar reforms—establishing strict liability for administrative negligence, specialized tribunals, and compensation mechanisms. A Government Tort Liability Act can provide uniform standards, ensuring redress for police misconduct, wrongful detention, and negligence.

Balanced accountability is key—while some immunity is essential, unchecked state power undermines justice. Indian jurisprudence must evolve to protect citizens’ rights over archaic doctrines.

I. INTRODUCTION

The extent of Government Liability in Torts under Indian law refers to its responsibility for wrongful acts committed by its servants or agencies. In India, government liability is determined by:

1. Constitutional Provisions (Article 300 of the Indian Constitution).
2. Legislative enactments: (eg: CPC, Motor Vehicles Act, Railways Act).
3. Judicial Precedents (case laws interpreting Sovereign & Non-Sovereign functions)
4. Torts maxims & Legal Principles (eg: Respondent Superior, Salus Populi Est Suprema Lex).

Historically, the state enjoyed sovereign immunity for acts done in its official capacity. However, courts have narrowed immunity, holding governments liable in many instances of negligence, fundamental rights violations, and administrative failures.

II. CONSTITUTIONAL & STATUTORY PROVISIONS ON GOVERNMENT LIABILITY:

PROVISION/STATUTES	EXPLANATION
Article 300 of the Indian Constitution	The government can sue and be sued in its name, subject to statutory limitations.
Section 79, Code of Civil Procedure (CPC), 1908	The government is to be sued in the name of the Union or State Government.
Section 80, CPC, 1908	A two-month notice is mandatory before initiating a suit against the government.
Motor Vehicles Act, 1988	Holds government liable for compensation in road accident cases involving public transport.

Railways Act, 1989 – Section 124 & 124A	Imposes strict liability on the railways for passenger injuries or death.
Police Act, 1861	Limits government liability for police actions in maintaining law and order.
Crown Proceedings Act, 1947 (UK Law, Persuasive)	British law allowed government liability in tort, influencing Indian jurisprudence.

III. TORTS MAXIMS & PRINCIPLES GOVERNING GOVERNMENT LIABILITY:

MAXIMS/DOCTRINE	EXPLANATION
Respondeat Superior (Let the master answer)	The government is liable for the wrongful acts of its servants
Qui facit per alium facit per se (He who acts through another acts himself)	The state is responsible for acts done by its employees.
Volenti non fit injuria (No injury to one who consents)	The government may be immune in cases where the victim assumed the risk.
Damnum sine injuria (Damage without legal injury)	Mere loss does not lead to liability unless legal rights are violated.
Salus populi est suprema lex (The welfare of the people is the supreme law)	The state’s duty to protect citizens overrides sovereign immunity.

IV. SOVEREIGN vs. NON-SOVEREIGN FUNCTIONS: THE KEY TEST

Traditionally, liability depended on whether the act was sovereign (immune from liability) or non-sovereign (liable in torts):

1. Sovereign Acts (No Liability)

- Legislative, military, diplomatic, judicial, or core police functions.
- Example: Police actions during a riot, military operations.

2. **Non-Sovereign Acts (Liability in Torts)**

- Commercial, administrative, or welfare activities, similar to private entities.
- Example: Negligence in railway operations, failure to maintain roads.

V. LANDMARK CASE LAWS DEFINING GOVERNMENT LIABILITY:

[A]. **Absolute Sovereign Immunity Era (Pre-Constitution)**

1. *Peninsular & Oriental Steam Navigation Co. v. Secretary of State for India*¹

- British India was liable for **non-sovereign acts (e.g., negligence in property management)**.
- **Held:** Government was **immune for sovereign functions**.

[B]. **Post-Constitution: Evolving Government Liability**

2. *State of Rajasthan v. Vidyawati*²

- A government jeep killed a pedestrian while used for an official's transport.
- **Held:** The state was **liable**, as maintaining transport was **not a sovereign function**.

3. *Kasturi Lal v. State of U.P.*³

- A gold merchant's valuables were wrongfully confiscated by the police.
- **Held:** The state was **not liable**, as police actions were **sovereign functions**.
- **Criticism:** This case **justified absolute immunity** for wrongful police actions.

4. *N. Nagendra Rao v. State of A.P.*⁴

- Government negligence in handling confiscated food grains led to spoilage.

¹ *Peninsular & Oriental Steam Navigation Co. v. Secretary of State for India (1861)*

² *State of Rajasthan v. Vidyawati (1962 AIR 933)*

³ *Kasturi Lal v. State of U.P. (1965 AIR 1039)*

⁴ *N. Nagendra Rao v. State of A.P. (1994 AIR SC 2663)*

- **Held: Absolute immunity is outdated;** the government is liable for commercial or regulatory negligence.

5. *Common Cause v. Union of India*⁵

- Negligence in granting liquor licenses led to spurious alcohol deaths.
- **Held:** The state was liable for **failure in its duty of care.**

[C]. **Expanding Government Liability – Human Rights Cases**

6. *Peoples Union for Democratic Rights v. Union of India*⁶

- Labor rights violations during **Asiad Games construction.**
- **Held:** Government agencies are **liable for fundamental rights violations.**

7. *D.K. Basu v. State of West Bengal*⁷

- **Custodial torture case under Article 21 (Right to Life).**
- **Held:** State was liable; compensation was awarded.

8. *Municipal Corporation of Delhi v. Subhagwanti*⁸

- A collapsed clock tower killed pedestrians.
- **Held:** Municipality was **liable for negligence** in maintenance.

[D]. **Other Cases Expanding Government Liability**

9. *M.C. Mehta v. Union of India*⁹ – **Absolute Liability Principle**

- **Facts:** Industrial gas leak (Oleum Gas Leak Case).
- **Held:** State cannot claim immunity for environmental negligence.
- **Doctrine Applied: Absolute Liability** (State is liable for hazardous activities without exceptions).

10. *S. Shetty v. Bharat Nidhi Ltd.*¹⁰

- **Facts:** Government negligence in railway property led to financial loss.

⁵ Common Cause v. Union of India (1999)

⁶ Peoples Union for Democratic Rights v. Union of India (1982 AIR 1473)

⁷ D.K. Basu v. State of West Bengal (1997 AIR SC 610)

⁸ Municipal Corporation of Delhi v. Subhagwanti (1966 AIR 1750)

⁹ M.C. Mehta v. Union of India (1987 AIR SC 1086)

¹⁰ S. Shetty v. Bharat Nidhi Ltd. (1958 AIR SC 868)

- **Held: Commercial railway operations were non-sovereign functions; liability imposed.**

11. *Chairman, Railway Board v. Chandrima Das*¹¹

- **Facts:** A Bangladeshi woman was raped by railway employees.
- **Held: State liable for violation of dignity (Article 21); compensation awarded.**

[E]. **Cases Defending Sovereign Immunity**

12. *Kasturi Lal v. State of U.P.*¹²

- **Facts:** Police wrongfully detained a gold merchant and lost his valuables.
- **Held: No liability; police actions were sovereign functions.**
- **Criticism: Promoted outdated colonial immunity doctrine.**

13. *State of Maharashtra v. Kanchanmala Vijaysing Shirke*¹³

- **Facts:** A government vehicle hit a pedestrian.
- **Held: Sovereign immunity was upheld as the vehicle was engaged in a government duty.**

Critique: These cases **inconsistently apply sovereign immunity**, creating legal uncertainty.

VI. DOCTRINAL CRITIQUES & NEED FOR REFORM:

1. Outdated Sovereign Function Doctrine

- The **British-era distinction between sovereign and non-sovereign functions** (P&O Steam Navigation Case, 1861) is **outdated**.
- Many administrative functions (e.g., transport, hospitals, police) are **essential services**, not sovereign acts.

2. Contradictions in Judicial Interpretations

- **Kasturi Lal (1965) granted immunity for police actions**, while **D.K. Basu**

¹¹ *Chairman, Railway Board v. Chandrima Das* (2000 AIR SC 988)

¹² *Kasturi Lal v. State of U.P.* (1965 AIR SC 1039)

¹³ *State of Maharashtra v. Kanchanmala Vijaysing Shirke* (1995 AIR SC 2499)

(1997) imposed liability for custodial torture.

- This **inconsistent approach** weakens victims' access to justice.

3. **Lack of a Codified Government Liability Law**

- Countries like **UK (Crown Proceedings Act, 1947)** and **Canada (Crown Liability and Proceedings Act, 1985)** have **clear legislative frameworks**.
- **India lacks a single statute**, leading to **case-by-case judicial interpretations**.

4. **Limited Compensation Mechanisms**

- Compensation for **custodial deaths, police excesses, and administrative negligence** is often provided **only through writ petitions (Article 32, 226)**.
- **Tort claims against the government should be streamlined** through dedicated tribunals.

VII. SUGGESTED REFORMS FOR A ROBUST LIABILITY REGIME IN INDIA:

1. **Legislative Reforms:**

- **Enact a "Government Tort Liability Act"**, abolishing the **sovereign immunity doctrine**.
- Define **clear exceptions for national security, war, and legislative functions** but **allow claims for negligence and administrative failures**.

2. **Judicial Reforms:**

- **Overrule Kasturi Lal (1965)** through a **larger bench Supreme Court ruling**.
- Extend **strict liability and absolute liability principles** to all public welfare activities.

3. **Institutional Reforms:**

- Establish a **Government Tort Claims Tribunal** (similar to consumer forums) to **process negligence claims faster**.
- Strengthen **compensation mechanisms** for wrongful police actions and

administrative negligence.

4. **Public Accountability Reforms:**

- Amend **Section 80 CPC** (which requires a two-month notice before suing the government) to **allow immediate suits in urgent cases**.
- Create **ombudsman mechanisms** to investigate tort claims against government agencies.

VIII. PRESENT LEGAL POSITION ON GOVERNMENT LIABILITY:

1. **Key Takeaways from Case Laws:**

- **Sovereign immunity is restricted.**
- The government is **liable for administrative, commercial, and negligence-based torts.**
- **Fundamental Rights violations override sovereign immunity (Article 21 cases).**
- Compensation is awarded in cases of **custodial deaths, police excesses, and public service failures.**

2. **Judicial Remedies Against the Government:**

- **Writ Petitions (Article 32 & 226)** – For fundamental rights violations.
- **Civil Suits (Section 80 CPC)** – After serving notice to the government.
- **Public Interest Litigation (PIL)** – For systemic government failures.
- **Tort Claims in Consumer Forums & Tribunals** – For negligence in public services.

IX. COMPARATIVE STUDY ON GOVERNMENT LIABILITY IN TORTS (India vs. International Legal Framework)

Country	Legal Framework for Government Liability in Torts	Scope of Liability
India	Article 300 of the Constitution, CPC Sections 79 & 80, and case laws	Limited liability based on the sovereign vs. non-sovereign function test
United Kingdom	Crown Proceedings Act, 1947	Government is fully liable for torts except in cases involving national security and legislative/judicial functions
United States	Federal Tort Claims Act, 1946	Government can be sued except for discretionary functions, military actions, and foreign policy
France	Conseil d'État Doctrine (State Council Jurisprudence)	State is liable for all administrative acts, except core sovereign functions
Germany	State Liability Act	Government is liable for wrongful acts, including police actions, unless acting under constitutional necessity
Canada	Crown Liability and Proceedings Act, 1985	Government liability is extensive, covering negligence in public services and even some policing functions

Key Takeaways for India:

- **More restrictive than UK, France, and Canada** (India still applies sovereign immunity in many cases).
- **More progressive than the US in human rights violations** (e.g., compensation for custodial torture).
- **Needs a codified framework** to define liability clearly, like in the UK and Canada.

X. ADAPTING BEST GLOBAL PRACTICES FOR GOVERNMENT TORTS LIABILITY IN INDIA:

To create a robust system of government liability in torts, **Indian courts can adopt best practices from jurisdictions like the UK, US, Canada, and France.** This will

ensure better accountability, justice for victims, and a balance between state immunity and citizen rights.

1. Key Global Best Practices & Their Applicability to India

Country	Best Practice	How India Can Adapt It
United Kingdom (UK)	Crown Proceedings Act, 1947 abolished sovereign immunity for torts, except in military and legislative actions.	Enact a "Government Tort Liability Act" to clearly define liability and exceptions, abolishing outdated sovereign immunity doctrines .
United States (US)	Federal Tort Claims Act, 1946 allows lawsuits against the government, but retains exceptions for discretionary functions and military actions.	Define clear exceptions for national security & policymaking but allow claims for negligence, abuse of power, and administrative failures .
Canada	Crown Liability and Proceedings Act, 1985 holds the government liable for negligence, similar to private entities.	Hold Indian government agencies liable for negligence in hospitals, public transport, policing, etc.
France	State Council (Conseil d'État) system provides specialized courts for administrative liability cases.	Establish a "Government Tort Claims Tribunal" to fast-track administrative negligence cases.
Germany	State Liability Act imposes strict liability for wrongful state actions, even police misconduct.	Apply strict liability for wrongful arrests, custodial torture, and police misconduct.

India's Current Position vs. Best Practices

- India **lacks a comprehensive statute** like the UK and Canada.
- Indian courts **still rely on the outdated sovereign vs. non-sovereign distinction**.
- Compensation is often granted **only through writ petitions**, unlike **France & Germany**, where specialized courts handle government

liability cases.

2. Reforms Indian Courts Can Implement

(A) Judicial Reforms: Moving Beyond Sovereign Immunity

- **Overrule *Kasturi Lal v. State of U.P. (1965)*** – A larger Supreme Court bench should declare that **police actions, hospital negligence, and administrative failures are not sovereign acts.**
- **Apply Strict Liability to Public Utilities & Services** – Government bodies running **hospitals, transportation, and disaster management** should face **absolute liability** for negligence (*as in M.C. Mehta case*).
- **Develop a Uniform Precedent** – Supreme Court should frame **guidelines on government liability** instead of deciding on a case-by-case basis.

(B) Legislative Reforms: Enacting a "Government Tort Liability Act"

- **Clear definition of government liability** – Based on UK's Crown Proceedings Act & Canada's Crown Liability Act.
- **Abolition of the sovereign vs. non-sovereign function test** – Instead, define **exceptions for core state functions (war, legislation, judiciary).**
- **State compensation fund for victims** – Inspired by Canada's model, for **wrongful arrests, custodial deaths, police brutality.**

(C) Institutional Reforms: Specialized Tribunals & Faster Resolution

- **Government Tort Claims Tribunal** – A **fast-track forum like consumer courts** to hear negligence claims against the government.
- **Police Accountability Commission** – Similar to **Germany**, to handle cases of wrongful detention, police violence, and custodial deaths.
- **Public Compensation Mechanism** – Inspired by **France's State Council system**, where victims can apply for **compensation without lengthy litigation.**

3. Case Study: How Indian Courts Can Learn from UK, US & Canada

(A) UK: Crown Proceedings Act & How India Can Implement It

- **Crown Proceedings Act, 1947** – Government can be sued for negligence except in national security and legislative actions.
- Case Law: *Dorset Yacht Co. Ltd. v. Home Office*¹⁴ – The government was held liable for negligence in prison administration.

Key Provision:

- The **UK abolished absolute sovereign immunity** for government negligence (except for military actions & judicial acts).
- Citizens can sue the **police, NHS hospitals, public transport, and administrative agencies.**

Indian Courts Should Implement:

1. **Make public hospitals fully liable for medical negligence.**
2. **Hold municipal corporations liable for unsafe roads & infrastructure failures.**
3. **Remove government immunity for wrongful arrests and police brutality.**

(B) US: Federal Tort Claims Act & Lessons for India

- **Federal Tort Claims Act, 1946** – Allows suits against the government except for discretionary functions.
- Case Law: *United States v. Muniz*¹⁵ – Allowed inmates to sue for government negligence.

Key Provision:

- Allows lawsuits against the government but **retains immunity for discretionary & policy decisions.**
- **Compensation funds** exist for victims of police violence, wrongful convictions, and medical negligence in public

¹⁴ Dorset Yacht Co. Ltd. v. Home Office (1970 AC 1004)

¹⁵ United States v. Muniz (374 U.S. 150, 1963)

hospitals.

Indian Courts Should Implement:

1. **Compensation for wrongful arrests (D.K. Basu case already set the precedent, but a structured law is needed).**
2. **Strict liability for public hospitals, public transport accidents, and police misconduct.**
3. **Tort Claims Tribunal** to reduce burden on courts.

(C) Canada: Crown Liability and Proceedings Act & Its Relevance to India

- **Crown Liability and Proceedings Act, 1985** – The government is liable like private citizens for wrongful acts.
- Case Law: *Hincks v. Gallardo*¹⁶ – Government liability was upheld for wrongful police actions.

Key Provision:

- The Canadian government is **liable for all negligence, including police misconduct, hospital negligence, and public administration failures.**

Indian Courts Should Implement:

1. **Remove immunity for police misconduct** – Wrongful detentions and custodial violence should lead to **direct compensation without a writ petition.**
2. **Government hospitals should be liable for patient deaths due to negligence.**
3. **State compensation for wrongful convictions (Bhagalpur blinding case-style abuses should have an automatic compensation mechanism).**

XI. CONCLUSION:

1. Balancing State Immunity & Citizen Rights

¹⁶ *Hincks v. Gallardo* (1989 2 SCR 221)

- **Sovereign immunity is outdated**, and courts have progressively restricted its application.
- The government is **liable for administrative, commercial, and welfare negligence**. A **Government Tort Liability Act** will provide clarity and improve access to justice for citizens.
- **Judicial activism** ensures **compensation for rights violations (Article 21 cases)**.

Reforms Needed:

- A **clear legislative framework** defining government liability.
- **Abolition of absolute sovereign immunity**.
- Strengthening **compensation mechanisms** for human rights violations.
- Courts must **consistently apply modern tort doctrines** instead of relying on outdated colonial principles.

2. India Needs a Structured Government Liability Regime based on current issues:

- **Unclear, case-by-case judicial rulings** – No uniform approach in sovereign immunity cases.
- **No codified law on government liability** – Unlike the UK, US, or Canada.
- **Compensation requires lengthy litigation** – Unlike France & Germany, where administrative tribunals provide faster relief.

3. How Indian Courts Can Adapt Global Best Practices

- **Follow the UK's model** – Remove sovereign immunity for **police, hospitals, transport, and municipal services**.
- **Follow Canada's model** – Make **government agencies liable for negligence like private entities**.
- **Follow France's model** – Set up **specialized courts for state liability claims**. State Liability under Administrative Law (**Conseil d'État doctrine**) – The government is liable for administrative failures.

Case Law: **Blanco Case (1873)** – Established that public services are subject to administrative liability.

- **Follow the US model** – Retain immunity for war, national security, and legislative functions, but remove it for negligence in public services.

India must abolish absolute sovereign immunity and introduce a structured Government Tort Liability Act to ensure justice, accountability, and faster relief for citizens.

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