



State Liability for Violation of Fundamental Rights: Reconsidering the Doctrine of Sovereign Immunity in India

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : <i>sovereign immunity Constitution, legal framework violations, state liability, institutional mechanisms</i>	<p><i>The doctrine of sovereign immunity, a principle rooted in the monarchical tradition that the State or its rulers can do no wrong, has continued to influence the legal framework governing state accountability in India, despite the country's transformation into a modern, democratic, and constitutional republic. Although this doctrine served historical purposes under colonial administration, its contemporary application raises significant concerns, especially when viewed against the backdrop of constitutionally guaranteed fundamental rights. In India, the Constitution enshrines inviolable civil liberties such as the right to life and personal liberty (Article 21), equality before the law (Article 14), and protection against arbitrary arrest (Article 22). When state functionaries violate these rights through unlawful detention, custodial violence, or administrative negligence, the invocation of sovereign immunity as a defence obstructs justice and dilutes the rule of law.</i></p> <p><i>This research paper undertakes a critical examination of the evolution and limitations of the doctrine of sovereign immunity in India, particularly in instances involving violations of fundamental rights by state actors. It traces the judicial shift from rigid adherence to sovereign immunity toward recognizing constitutional torts and awarding public law compensation. Landmark judgments like Rudul Sah, Nilabati</i></p>



Behera, and D.K. Basu serve as vital turning points where the judiciary asserted that the state cannot hide behind the cloak of immunity when it infringes upon basic human rights. Furthermore, the paper analyzes the theoretical and practical inadequacies in the current legal framework and draws on comparative international models to recommend reforms. These include legislative codification of state liability, clearer guidelines on the limits of sovereign functions, and institutional mechanisms to ensure timely and effective redressal for rights violations. In doing so, the paper argues for a more accountable, transparent, and rights-oriented approach to state liability in India.

1. Introduction

The age-old principle that "the King can do no wrong" serves as the philosophical foundation of the doctrine of sovereign immunity, which historically protected monarchs and their governments from legal accountability. This principle, inherited from British common law, became embedded in the legal fabric of colonial India and, despite the country's transition to a democratic and republican system of governance, continues to exert influence over the determination of state liability. In modern India, where the Constitution guarantees fundamental rights to every citizen, the continued application of such an archaic doctrine presents a stark jurisprudential contradiction. The Indian State, unlike the colonial rulers, derives its authority from the Constitution and is duty-bound to uphold the rights enshrined in it.

As the primary duty bearer of fundamental rights under Part III of the Constitution, the State has both a moral and legal obligation to prevent their infringement. However, when rights are violated due to the unlawful, negligent, or arbitrary actions of state agents—such as unlawful arrests, custodial deaths, or administrative lapses—the question arises whether the State can escape liability by invoking sovereign immunity. This creates a critical tension between the principles of accountability and immunity, and challenges the very foundation of a rights-based democratic framework.

This paper undertakes a rigorous examination of this issue, questioning whether the doctrine of sovereign immunity remains justifiable or relevant in a modern constitutional democracy committed to justice, liberty, equality, and human dignity. It argues that the Indian State must be held accountable for violations of fundamental rights, and that the traditional legal doctrines that insulate the State from such liability must undergo reform and reinterpretation. The evolving role of the judiciary, the concept of constitutional



torts, and international comparative perspectives are explored to emphasize the need for a more robust and human rights-compliant approach to state accountability.

2. Conceptual Framework: Sovereign Immunity and State Liability

The doctrine of sovereign immunity is a long-standing legal principle that shields the State from being sued or held liable in a court of law without its express consent. This concept finds its origin in English common law, where the Crown—as the embodiment of the State—was considered infallible and, therefore, beyond the reach of ordinary legal processes. The maxim "Rex non potest peccare" (the King can do no wrong) symbolized this absolute immunity. When the British introduced their legal system in India during the colonial period, this doctrine was transplanted into Indian jurisprudence, where it took root as a fundamental principle of State protection. Even after independence, the framework for sovereign immunity was retained, with Article 300 of the Indian Constitution serving as its modern constitutional anchor. Article 300 essentially preserves the pre-Constitutional position regarding government liability, permitting the Union and State governments to be sued “as the Dominion of India and the Provinces of India might have been sued” before the commencement of the Constitution.

In contrast, the concept of state liability represents a progressive legal evolution that seeks to hold the State accountable for the wrongful or negligent acts of its agents, particularly when such acts cause harm or infringe upon individual rights. This doctrine acknowledges that in a constitutional democracy governed by the rule of law, the State cannot remain immune from the consequences of its actions or omissions, especially when the rights and liberties of citizens are at stake. As such, state liability serves as a crucial instrument for enforcing accountability, ensuring justice, and deterring abuse of power by public authorities.

The tension between these two doctrines—sovereign immunity and state liability—becomes particularly acute in the context of fundamental rights violations. Part III of the Indian Constitution enshrines a range of civil liberties and guarantees that every individual is entitled to enjoy protection against arbitrary State action. However, when state officials violate these rights—through unlawful detention, custodial torture, illegal demolitions, or denial of basic services—the aggrieved parties often face procedural and substantive barriers to seeking redress, especially when the State raises the defense of sovereign immunity. Thus, the core legal and constitutional dilemma lies in reconciling the State's historical immunity with its modern responsibility to protect and uphold the fundamental rights of its citizens. This reconciliation demands a re-evaluation of the doctrine of sovereign immunity in light of contemporary constitutional

values such as justice, equality, dignity, and the rule of law. It is this conflict and the need for its resolution that forms the central focus of this scholarly inquiry.

3. Fundamental Rights and the State

The Indian Constitution guarantees several fundamental rights, such as:

- **Article 14:** Right to equality before the law
- **Article 21:** Right to life and personal liberty
- **Article 22:** Protection against arbitrary arrest and detention

When these rights are violated by the actions or omissions of government officials, the aggrieved person is entitled to seek remedies. However, state agents frequently invoke sovereign immunity as a defense, which raises constitutional and ethical concerns.

4. Judicial Evolution in India

The Indian judiciary has played a significant role in developing the jurisprudence around state liability for violations of fundamental rights.

- **Rudul Sah v. State of Bihar (1983):** The Supreme Court awarded compensation to a person illegally detained for over 14 years. This case marked a turning point by affirming the principle of constitutional tort.
- **Nilabati Behera v. State of Orissa (1993):** The Court held that the state cannot claim sovereign immunity in cases of custodial death, reinforcing the principle that compensation must be granted for violations of Article 21.
- **D.K. Basu v. State of West Bengal (1997):** The Court laid down detailed guidelines to prevent custodial torture and emphasized state responsibility. The judgment underlined that accountability is essential to uphold the rule of law.

These cases collectively demonstrate a judicial trend toward limiting the scope of sovereign immunity, particularly when fundamental rights are at stake.

5. Sovereign vs. Non-Sovereign Functions: A Fading Distinction

In early Indian jurisprudence, a critical distinction was drawn between sovereign and non-sovereign functions of the State to determine the applicability of sovereign immunity. This classification was primarily based on the doctrine inherited from English law and articulated in landmark cases such as *P. &*



O. Steam Navigation Company v. Secretary of State for India (1861), where the court held that the State could not be held liable for acts done in the exercise of sovereign authority, such as defense, foreign policy, or maintenance of law and order. These were deemed to be inherent and inalienable functions of the State, essential to its existence and governance. On the other hand, non-sovereign functions were those that could be performed by private individuals or corporations, such as trade, commerce, education, or healthcare. For such acts, the State could be held liable like any other legal entity.

However, in the context of a modern welfare-oriented constitutional democracy like India, this binary distinction has become increasingly untenable, outdated, and illogical. The post-independence Indian State is not merely a coercive apparatus for maintaining order, but a welfare state committed to the promotion of socio-economic justice and the protection of fundamental rights. Functions such as education, public health, housing, food security, transportation, and social security are no longer optional benevolences; they are now recognized as integral to the realization of constitutional guarantees and human dignity under Articles 14, 21, and Directive Principles of State Policy. In this changed paradigm, such functions cannot be dismissed as “non-sovereign” and thus outside the protective veil of sovereign immunity.

The Indian judiciary has gradually acknowledged this shift. Courts have increasingly emphasized the nature and consequences of the State’s actions, especially where fundamental rights violations are concerned, rather than rigidly applying the sovereign/non-sovereign dichotomy. In *Nilabati Behera v. State of Orissa*, for example, the Supreme Court held that custodial violence cannot be protected under sovereign immunity, as it infringes upon the right to life and personal liberty under Article 21. Similarly, in *Common Cause v. Union of India*, the Court dismissed the argument that welfare functions such as providing medical care could be insulated by immunity claims.

This pragmatic and rights-centric judicial approach signifies a move toward holding the State accountable for all its actions, irrespective of whether the function is classified as sovereign or not. The essential test today is not the formal label attached to a government function, but whether constitutional rights have been violated and whether the State, as the guardian of those rights, has failed in its duty. In doing so, the courts have implicitly challenged the continued relevance of the sovereign/non-sovereign distinction, urging a reconstruction of the legal doctrine in line with the values of a transformative Constitution.

6. International Trends and Comparative Analysis

Globally, many jurisdictions have moved away from absolute sovereign immunity:

- **European Convention on Human Rights (ECHR):** States are held liable for violations of civil and political rights. The European Court of Human Rights has awarded damages in several cases.
- **United States:** The Federal Tort Claims Act (1946) allows individuals to sue the federal government for wrongful acts committed by government employees.
- **Inter-American Court of Human Rights:** Emphasizes reparative justice, including financial compensation, for victims of human rights abuses by the state.

These models highlight the importance of establishing a legal framework that balances state functions with individual rights.

7. Challenges in the Indian Context

Despite progressive judgments, several challenges remain:

- **Lack of a statutory framework:** India does not have a dedicated law codifying state liability.
- **Judicial inconsistency:** Courts have sometimes applied the sovereign function doctrine inconsistently, leading to unpredictability.
- **Implementation hurdles:** Compensation awarded by courts is often delayed or inadequately enforced.

These gaps undermine the efficacy of the constitutional remedies provided under Article 32 and Article 226.

8. Recommendations

8.1. Codification of State Liability:

One of the most significant reforms necessary to strengthen state accountability is the codification of state liability through a comprehensive legislative framework. At present, the absence of a specific statute governing the liability of the State for wrongful acts committed by its agents has led to judicial inconsistencies and uncertainty in enforcement. A State Liability Act should clearly define the scope of governmental liability in cases of constitutional and legal violations, outline the procedures for filing claims, establish timeframes for resolution, and set out the grounds and limits for compensation. This

codification would enhance legal clarity, ensure consistency in judicial decisions, and provide a transparent mechanism for victims to seek redressal.

8.2. Constitutional Interpretation of Article 300:

The Indian judiciary must adopt a more progressive and purposive interpretation of Article 300 of the Constitution, which deals with the legal capacity of the Union and State governments to be sued. While this provision has historically been interpreted through the lens of colonial precedents, it is imperative that courts reinterpret it in alignment with the spirit of Part III of the Constitution, which guarantees fundamental rights. Sovereign immunity should be narrowly construed and should not be permitted as a defense when state actions infringe upon basic constitutional rights. A rights-centric interpretation of Article 300 would reinforce the principle that the State is not above the Constitution and must remain accountable for violations committed in its name.

8.3. Establishment of Compensation Commissions:

To ensure timely and effective remedies for victims of state-sponsored rights violations, the establishment of independent statutory compensation commissions at both the central and state levels is essential. These commissions should be empowered to conduct inquiries, assess the nature and extent of harm, recommend appropriate compensation, and monitor the implementation of remedial measures. By providing a quasi-judicial, accessible, and efficient forum for compensation claims, such bodies would ease the burden on traditional courts and expedite justice for victims. Moreover, these commissions should operate transparently and be guided by principles of natural justice, proportionality, and equity.

8.4. Human Rights Training for Public Officials:

Another critical reform lies in the systematic training and sensitization of public officials, particularly those in law enforcement, corrections, and public administration. Many instances of rights violations stem not only from deliberate abuse of power but also from ignorance of legal and constitutional obligations. It is, therefore, necessary to institutionalize mandatory human rights education and capacity-building programs for police officers, prison authorities, civil servants, and frontline administrators. Training modules should include legal obligations under the Constitution, the importance of procedural safeguards, non-discriminatory practices, and consequences of non-compliance. Such education would foster a culture of respect for human dignity within the functioning of the state and help prevent future violations.



9. Conclusion

The doctrine of sovereign immunity, though rooted in historical precedent, is increasingly incompatible with the principles of constitutionalism and human dignity. The Indian judiciary has taken commendable steps to protect fundamental rights through innovative interpretations. However, a robust statutory and institutional framework is essential to consolidate these gains. The Indian state must embrace accountability not as a limitation, but as an affirmation of its constitutional role as the protector of citizens' rights.

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