VOLUME 7 | ISSUE 2

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

THE KING CAN DO NO WRONG? STATE LIABILITY AND CONSTITUTIONAL TORT IN INDIA

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ABSTRACT

Constitutional tort is one of the most important mechanisms for vindicating[3] constitutional rights. But the doctrine governing such claims is in disarray[4]. A constitutional tort is a legal action brought against a government or state for violating an individual's constitutional protections rights[5], establishing that the state can be held vicariously liable[6] for unlawful acts[7] of its employees that violate a citizen's constitutional rights. If any of the civil rights are abused, there is a judicial attempt to obtain a legal redress in the form of damages[8]. The sole difference is that if the act is performed in the execution of sovereign government functions[9], then such action can not be held accountable to the government.

In early years, the conception was that *"**King can do no wrong**"*[10]. However in the evolution of thedemocracies, the state started being held responsible for its own acts. Article 300[11] The Indian constitution embodies the concept of Constitutional tort. It permits the Union and state government to be sued as a jurist person capable of owning and acquiring property, entering into contracts, bringing legal actions etc. The nation of the term " **Tortious liability of the state**"[12](if officials or employees commit a civil wrong that harms a citizen) refers to the

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[3]Clearing someone of blame or suspicious or proving that a special action, statement, or right is entirely justified, correct and valid.
[4]A state of complete lack of organization.
[5]Constitutional Fundamental Right in India.
[6] A Person legally Responsible for the wrongful actions or mistakes committed by someone else.
[7]Any action or omission that violates established civil laws and are legally punishable or actionable.
[8]A person is taking legal action in court to force a wrongdoer to pay financial compensation for the harm.
[9] Non- commercial activities that only a state can perform, such as defense, police operation, making law and maintaining public order.
[10]In old English common law the historic legal principle.
[11]The legal capacity of the Government of India and state Governments to sue and be sued in the court of law.
[12]The government can be held legally responsible and forced to pay damages.

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circumstance in which the government can be held vicariously accountable for the action of the employees.

Key Word: *Accountability, Injury, Compensation, Vicariously Liable, Government Responsible, Damage.*

1. INTRODUCTION

Constitutional tort refers to the legal remedy under public law in which the state is held liable to pay compensation for violation of fundamental rights of individuals by its officials or agencies. Constitution tort arises when there is an infringement[13] of rights guaranteed under Part III[14] of the Indian constitution, specially Article 14[15], 19[16], and 21[17].Constitutional tort is different from private tort because it is based on the violation of constitutional Rights and not merely civil wrongs. And the doctrine of constitutional tort in India is not explicitly mentioned in the constitution, but it has been evolved by judicial interpretation.

Constitutional tort is generally a judicial instrument by which the state can be held vicariously liable for the acts of the servant. It's the legal action to get the legal remedy in the form of damages when any of the constitutional rights are violated.

The origin of constitutional law may be back to the time when the common medieval saying of **"Res Non -PotestPeccare"**[18] started losing its acceptance in the eyes of the public. The primary outcome is monetary compensation or damages awarded to the victim to repair the harm and deter future abuses.

OBJECTIVE OF THE STUDY

1. Protection of the rights:- On the face of it, constitutional tort has the effect of narrowing the constitutional rights by shifting the attention of the court from the overly protected constitutional office to the injuries inflicted on individuals.

2.Dimension of Common law:- It sets limits and enforces government discretion in a stricter sense which would not have otherwise been achieved through injunctions and common law remedies. Constitutional tort pursues compensation to the injured while at the same time

[13] The unauthorized violation, breaking or encroachment of a legal right.
[14] Fundamental Rights.
[15] Right to Equality.
[16]Right to Freedom.
[17]Right to Life and Personal Liberty.
[18] The king can do no wrong (as the king was considered the son of god).

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deters constitutional violation by setting adequate monetary disincentives to unconstitutional action.

3. Actionable right:- The old concept of individual harm is wholly incorporated into the spectrum of constitutional rights into actionable rights. By punitive damages, regulate the discretion of the government to inflict injuries.

4. Constitutional Remedies:-The vindication of the fundamental right so as to promote the values of an open[19] and democratic society based on freedom and equality for human rights. The deterrence and prevention of future infringements of fundamental rights by the legislative and executive organs of state at all levels of government.

RESEARCH GAP

State protection and Victim Rights:-

In India, constitutional torts aren't written down in a standard guidebook or act passed by Parliament. Instead, judges have had to invent them case by case to help state victims.

Fair compensation:-

If someone hits your car, a mechanism can give an exact bill for the damages. But if the police lock someone up illegally for days, how do you put a price tag on lost freedom or dignity?

The biggest gap in constitutional tort is that there is no official law or standard formula to calculate compensation or punish abusive officials. Without clear rules, Judges are basically guessing what a human right is worth, leaving victims stuck in bureaucratic limbo with wildly inconsistent payouts.

2. STATE LIABILITY IN TORT AND MINISTERIAL STATEMENTS

The concept of Constitutional Tort Law is based on the archaic English law. The Law Commission in 1956 had outlined certain principles on which appropriate legislation on the tortious liability of the state would proceed, in its first report on the 'Liability of the State in Tort'. A bill known as the government (Liability in Torts) Bill was introduced in 1967. Supreme Court in *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*[20], recommended a legislative measure on the subject-matter.

[19] Ensuring courts can step in and enforce these rights to protect freedom, justice, and voice of every citizen.

[20] AIR 1965 SSC 1039

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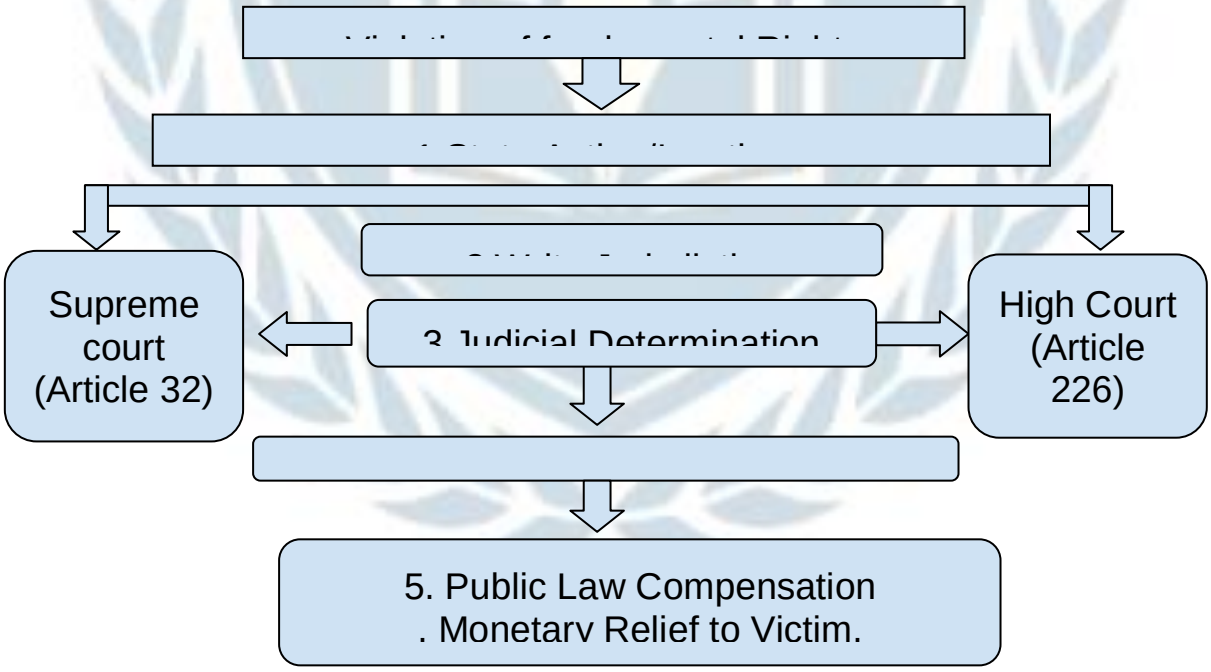
The Supreme Court in *Common Cause, a Registered Society vs. The Union of India* held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign.

Now let us understand the observation given by the honourable justice Nagarathna, why she did not agree with the approach laid down by the majority judges on liability of ministers in constitutional tort.A statement may be made by a Minister either inside or outside the House of People/Legislative Assembly of the State. A statement may also be made by a Minister in writing or by words spoken.

A statement may be made in private or in public. A statement may also be made by a Minister either touching upon the affairs of the Ministry/ department of which he is in control or touching generally upon the policies of the Government of which he is a part.

A Minister may also make a statement, in the form of an opinion on matters about which he or his department is not concerned or over which he has no control. All such statements need not necessarily give rise to an action in tort or in constitutional tort.

3. SOVEREIGN IMMUNITY AND THE CONSTITUTIONAL BASIS OF STATE LIABILITY



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3.1 Sovereign Immunity

The word is derived from the latin word "supernus" meaning the equivalent of supreme power however the actual practice of the word is quite different nowadays. Sovereignty refers to the power of supreme authority, initially used in monarchy to explain the power of the king as supreme, which cannot be questioned. In modern democracies this power which earlier rested with the monarchs now is given to the people of the nation, the exercise of that power through representative bodies like the parliament or Rajya Sabha in India.

This is also one of the important sovereign functions of the government. The maintenance of the military road is carried out by the government for the purpose of defence. The government is training the safety of the general public.

3.2 Constitutional Provisions

Various aspects of constitutional tort have been interpreted through case laws. Over the years, the jurisprudence around this concept has evolved and many gray areas have been clarified. Let us discuss how the judiciary has treated the concept of constitutional tort.

1. Article 294(b) makes the union or state government liable for contractual obligations inherited from the previous government.
2. Article 300(1) provides that the union and state governments may sue and sued in their respective names, forming the constitutional foundation of the state tortious liability.
3. Article 32 of the Indian constitution, which empowers the supreme court to enforce fundamental rights.
4. Article 226 of the Indian constitution, which empowers high courts to issue writs for enforcement of rights.
5. Article 21 of the Indian constitution, which guarantees protection of life and personal liberty.

4. JUDICIAL PRECEDENTS IN LIGHT OF CONSTITUTIONAL TORT

(a) *Rudul Shah vs. State of Bihar*[21]

[21] 1 August, AIR 1983, 4 SCC 141. Bench Y.V Chandrachud, Amarendra Nath Sen, Misra Rangnath.

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In this case, a public interest litigation case was brought to the Supreme Court under Article 32 of the Indian Constitution. The petitioner demanded Rudul Shah's release and compensation for his illegal detention. Rudul Shah was arrested for the murder of his wife in 1953. In 1968 , he was cleared of the charges. Since his acquittal, he spent 14 years in jail. In this case, the doctrine of compensatory jurisprudence was developed for infringement of fundamental rights. That was the first time the supreme court ordered penalties for fundamental rights violations. The court observed that "the right to restitution is palliative for the legal actions of instrumentalities acting in the name of public interest and presenting the forces of the state as a shield for their protection". The main legal issue in the case was the constitutional authority given under Article 32 of the Indian Constitution to award monetary compensation for the violation of the fundamental right of any citizen .The Supreme Court ruled that keeping an innocent man locked up for 14 years was a terrible violation of his freedom. The judges ordered the state government to pay him immediate compensation to help rebuild his broken life, making it clear that the state cannot hide behind excuses when its officers destroy a citizen's basic rights.

(b) *Nilabathi Behera vs. State Of Orissa*[22]

Another case in which the concept of constitutional tort was highlighted is Nilabathi'scase , in the present case Odisha police arrested 22 year old Suman Behera for theft. The next morning, his mutilated body was found on a railway track. Police claimed he escaped and died in a train accident, but a judicial inquiry proved he was brutally beaten to death while handcuffed in police custody. In other words, the case was related to the custodial death of the petitioner's son, the individual received injuries that resulted in his death. This is often regarded as an instance of human rights violation.

The main legal issue involved was, can the state use sovereign immunity to escape liability, and can courts grant compensation under public law for Article 21 violations?. The Supreme Court ruled that sovereign immunity cannot shield state brutality, declaring custody requires absolute protection and the court solidified that giving immediate compensation under Article 32 is not just about punishing the state, but about helping a broken family survive. The judges

[22] AIR 1993, 2 SCC 746 Justice J.S Verma, Dr. A.S Anand, Hon'ble justice N.P Singh.

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ordered the state of Orissa to pay ₹1,50,000 directly to the mother to help her pick up the pieces of her life.

(c)*Bhim Singh vs. The state of Jammu & Kashmir*[23]

This case is focused on the violation of Article 21 and 22(2) of the Indian constitution. In the present case The police intercepted and arrested MLA Bhim Singh at midnight while he was driving to a crucial assembly session. The officer internationally hid hom from the courts, missed the mandatory 24 hours deadline to present him, and secretly went to judges houses to get fake, backdated detention papers. The main legal issue involved in the case was- did this deliberate political arrest violate his basic right to freedom, and can the Supreme Court order the government to pay a victim money even after they have already been let out of jail?. The Supreme Court pointed out the state's malicious attempt to block an elected official from voting. The judges ruled that the state cannot treat personal liberty like dirt and ordered the government to pay him ₹50,000 for destroying his constitutional rights. Arbitrary arrest and deprivation of liberty both the issues were dealt in the present case and again the constitutional tort was highlighted.

(d) *D.K Basu vs state of West Bengal*[24]

The present case was concerned with custodial torture and violation of Article 21 of the Indian Constitution. The facts of the case involved a human rights activist who sent a desperate letter to the Supreme Court highlighting horrific newspaper reports of people being tortured and beaten to death inside police lock-ups. Realising that law enforcement was operating without any oversight or rules, the Court turned this letter into a major public interest lawsuit to stop police brutality across India. The legal point of determination in the case was- does custodial torture violate a person's Right to Life and Dignity under Article 21? More importantly, what strict, mandatory rules must the police follow during an arrest to ensure a citizen is not quietly abused or killed behind closed bars?. The Supreme Court declared that police brutality inside lockups is a savage attack on human dignity. The judges created 11 strict rules that every officer must follow during an arrest and made it clear the government must pay cash compensation to any victim of police abuse.

[23] AIR 1985,4 SCC 677. Justice O.Chinnappa Reddy and Justice V. Khalid.
[24] AIR 1997 SC 610 Bench Justice Kuldip Singh and Justice Dr. A.S. Anand.

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(e) *Sube Singh vs State of Haryana*[25]

In this case, the court drew a line in the sand, ruling that judges shouldn't hand out taxpayer-funded compensation for minor police harassment. In the present case a father named Sube Singh wrote a desperate letter to the Supreme Court because the Haryana police were relentlessly terrorizing his family. The police were huntingfor Sube's son, an escaped criminal, and in the process, they repeatedly picked up Sube Singh, his wife, and their daughters, keeping them in illegal detention and beating them to pressure the son to surrender. The core legal issue was -can the court grant direct monetary compensation under public law (Article 32) in every single case where the police misbehaves, or must the victim prove a "gross and undeniable" level of Traditional tort law recognizes damages as a remedy that affirms rights, provides compensation, promotes deterrence, vindicates the citizens' reliance on the sacrosanct nature of their rights, and secures corrective justice." Imposing government liability for constitutional violations attempts to advance analogous goals, which includes Affirming the plaintiffs rights: When an individual's constitutional rights are violated, remedies, such as injunctions can only serve to restrict future constitutional harm. Unless he is paid damages for the past loss he has suffered, his constitutional rights would be meaningless.torture using medical evidence before getting public funds?. The Supreme Court drew a sharp line, ruling that judges shouldn't hand out taxpayer-funded compensation for basic police harassment. Instead, public payouts are strictly reserved for severe, undeniable brutality that is backed up by solid medical proof.

5. THE RATIONAL BEHIND ESTABLISHING GOVERNMENT LIABILITIES

Traditional tort law recognizes damages as a remedy that affirms rights,provides compensation, promotes deterrence, vindicates the citizens' reliance on the sacrosanct nature of their rights, and secures corrective justice." Imposing government liability for constitutional violations attempts to advance analogous

goals, which include:

- *Affirming the plaintiffs rights:* When an individual's constitutional rights are violated, remedies, such as injunctions can only serve to restrict future constitutional harm.

[25] February 3, 2006 (Crl.) No.237 of 1998 , Chief justice Y.K. Sabharwal, C.K Thakker, P.K Balasubramanyam.

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Unless he is paid damages for the past loss he has suffered, his constitutional rights would be meaningless.[26]

- *Breach of Social Contract:* A Constitution is a social contract through which individuals give up certain liberties, in exchange for government-provided community services like enforcement of social norms through criminal law,economic infrastructure, and social stability." However, the government also agrees to certain limitations on its authority in the form of constitutional rights.Whenever the government breaches this contract on which the people have relied to their detriment, they deserve compensation.
- *Corrective Justice:* The Aristotelian theory of "corrective justice" requires the award of monetary compensation whenever one party ignores the limitations placed upon its behavior with respect to another party. When the government oversteps its limitations, the plaintiff suffers loss while the state may realize gains through more efficient policy implementation. The transfer of funds from the wrongdoer to the victim restores the balance.
- *Responsibility as Principal and Employer:* Since the government selects its own agents, trains them, and oversees their employment, the government alone is in the best position to institute the programs necessary to eradicate constitutional violations.

6. CONSTITUTIONAL TORT AND COMPENSATORY JURISPRUDENCE: RUDAL SHAH TO M.C MEHTA

The Apex Court always took recourse to the extent of enforcement of fundamental rights in order to answer on the remedy for the constitutional tort. The analysis was divided on the substantive basis of the compensation if there is a gross violation of the fundamental rights. As Chief Justice of the United States John Marshall remarked ” the Government of the United States has been always witnessed as the government of laws and not of man”, in India also the same was the case when the government’s using constitutional provisions and by applying the defence of sovereign immunity kept on violating the fundamental rights.

[26]D.K Basu vs union of india AIR 1997 SC.

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The court in *Rudal Shah* opined " the plaintiff has the right to compensation if there is a violation of their fundamental rights along with penalizing the authorities which, acting in the name of public interest, use their powers as a shield to prevent themselves from scrutiny.

At a later stage, after awarding compensation in the *Devki Nandan case*[27] *For* deliberate and motivated harassment of the plaintiff, the court established the doctrine of appropriate cases in Sebastian Hungry and Bhim Singh. Subsequently, in MC Mehta, the complete doctrine of Constitutional Tort was established along with the introduction of deep pocket theory.

However, due to the sole focus of law formation on public law and judicial pronouncements, it is hard to find a jurisprudence of further developments. Thus, there was an attempt to incorporate a separate clause under Article 13[28] as 13A coming just before the fundamental rights dealing with the right to compensation for violation of fundamental rights. It was suggested that this will help in increasing the liability and act in consonance with Article 32.

The award of damages by the hands of the judiciary is indeed a creative concept introduced in India but fails at certain stages due to the absence of well-defined criteria.

7. POLICE EXCESSES AND STATE ACCOUNTABILITY:CUSTODIAL VOILENCE, ILLEGAL DETENTION AND ENCOUNTER KILLINGS

1.*Custody death:-* The incidence of custodial violence, and custody death, continues unabated. Delhi and Gauhati High Courts recur with a disturbing frequency in this section, but cases from Rajasthan, Karnataka, Maharashtra, Uttar Pradesh, West Bengal and Andhra Pradesh testify to the prevalence of custodial violence across a spectrum of states.

2. *Police Atrocity:-* Excessive, or unwarranted, use of force by the police constitutes a ground for seeking relief – both compensa-tory and asking for investigation and prosecution – from the court. In the two cases reported in the period under survey, the Andhra Pradesh High Court and the Bombay High Court at Aurangabad have deflected the issue from that of deterring culpability and compensation to recognizing the imperative of investigation.46 In the Maharashtra case, the court declined to act since a commission of inquiry had been

[27]Deokinandan Prasad vs state of Bihar and others AIR 1971 SCR 634 , 5 judges bench Justice S.M.Sikri, G.K. Mitter,K.S Hegde, A.N Grover and P. JaganmohanReddy.

[28] Indian constitution is the foundational shield of fundamental right and establishes the constitutional basis for judicial review in India.

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appointed into the alleged incidents of police violence, and it considered any intervention at that stage premature.

3. *Illegal detention:-* Illegal detention directly violates Article 21 of the Constitution, which guarantees personal liberty. Under the doctrine of constitutional tort, Indian courts reject sovereign immunity for state actions that breach fundamental rights. When police or authorities unlawfully confine an individual, the State is held strictly liable. Higher courts exercise writ jurisdiction to command immediate release and award monetary compensation as a public law remedy to vindicate the victim's rights.

4.*Encounter killing:-* The labelling of a person as a member of an extremist organization has provided a shield to the police and armed forces in cases of encounter killings or in fake encounters. The obstacles to enabling investigation in cases of alleged encounters were set out in an earlier survey.

8. CONCLUSION

It can be concluded from the above discussion that the Hon'ble Supreme Court of India has been consistent in invoking Constitutional tort whenever an act of omission and commission on the part of a public functionary, including a Minister, caused harm or loss and Ultimately, the award of damages by the hands of the judiciary is indeed a creative concept introduced in India but fails at certain stages due to the absence of well-defined criteria. There are several constitutional clauses pertaining to the State's tortious responsibility such as Article 294 (b) which makes the Union/state government liable for any contractual obligation. Similarly, Article 300 (l) stipulates that the Indian government or a state may sue or be sued in regard to their respective affairs in the same circumstances that Indian states have sued or been sued The development of judgments carried through differentiating the functions of state officials as being sovereign or non-sovereign.

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While justice Nagarathna in her dissent note had been alarmed about the complexity in adopting the approach introduced by majority judges. She suggested that, it would not be prudent to treat all cases where a statement made by a public functionary has resulted in harm or loss to a person or citizen, as a constitutional tort it must be borne in mind that the tool of treating an action as a constitutional tort must not be wielded only in instances wherein state lawlessness and indifference to the right to life and personal liberties have caused immense suffering.

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