

## CONTRACTUAL LIABILITY OF THE STATE IN INDIA : AN ANALYSIS

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### ABSTRACT

In the advanced time of a welfare express, government's financial exercises are extending and the administration is progressively expecting the part of the container of countless. Today an expansive number of people and business associations appreciate magnanimity as government contracts, licenses, standards, mineral rights, occupations, and so on. The paper talks about the source and in addition current position of government contract in different nations like the UK, US and so forth and after that in this way proceeds onward to the Indian point of view but also some important case laws related to contractual liability of state. It examinations the situation of government contracts in India, their statutory and additionally legal acknowledgment and the liabilities on the State attributable to the said acknowledgment. Moreover, the paper talks about different customary law rules that oversee the legally binding obligation of the State and make it a need in the cutting edge times. The paper condemns the part of the official and the administrative organs of the legislature and infers that there is a need to build up a few standards to control and ensure singular enthusiasm for such riches and in this manner structure and teach the administration attentiveness to give such advantages.

**Key words:** contractual liability, state, administrative, legislature, government.

## INTRODUCTION

In present day state, whatever be the type of government, the individual is influenced in his regular day to day existence and in the activity of his social liberties by demonstrations of the State and its authorities in different circles and in various ways. A portion of these demonstrations are finished by the State as the sovereign while others are finished by the State in exchanging and different limits in an indistinguishable way from a private individual does.

Consequently, the subject of government contracts has accepted awesome significance in the cutting edge times. In the cutting edge period of a welfare state, government's monetary exercises are extending and the government is progressively accepting the part of the container of an expansive number of advantages. Today countless and business associations appreciate charity as government contracts, licenses, quantities, mineral rights, employments, and so on. This raises the likelihood of activity of energy by a government to administer magnanimity in a subjective way. Hence, there is a need to build up a few standards to control and ensure singular enthusiasm for such riches and along these lines structure and train the government watchfulness to present such advantages.

A contract is an agreement enforceable by law, which offers individual rights, and forces individual commitments, which the law secures and implements against the gatherings to the agreement. The general law of contract depends on the origination, which the gatherings have, by an agreement, made lawful rights and commitments, which are simply individual in their temperament and are just enforceable by activity against the gathering in default. Section 2(h) of the Indian Contract Act, 1872 characterises a contract as "An agreement enforceable by law". "Agreement" has been characterised in Section 2(e) of the Act as "each guarantee and each arrangement of guarantees, shaping thought for each other." A contract to which The Central Government or a State Government is a gathering is known as a "Government Contract".

The Crown Proceedings Act, 1947, abolished this procedure and permitted suits being brought against the Crown in the ordinary courts to enforce contractual liability, a few types of contracts being, however, excepted. The Indian Contract Act, 1872 does not prescribe any form for entering into contracts. A contract may be oral or in writing. It may be expressed or be implied from the circumstances of the case and the conduct of the parties.

Government contracts have been concurred Constitutional acknowledgment. The Constitution, under Article 298, unmistakably sets out that the official energy of the Union and of each state reaches out to "the carrying on of any exchange or business and to the procurement, holding and transfer of property and the making of contracts for any reason". The Constitution thusly, gives that a government may sue or be sued by its own name. A comparative arrangement is found in the Code of Civil Procedure 1908 under Section 79.

#### **Aim of the study :**

To know about the contractual liability of the government.

- **RESEARCH PROBLEM**

Whether the state is liable under the concept of contractual liability?

- **REVIEW OF LITERATURE**

- 1) Contractual Liability Of The State In India: An Analysis , Author : Ms. Swati Rao In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organisations enjoy largess in the form of government contracts, licenses, quotas, mineral rights, jobs, etc. The paper discusses the origin as well as current position of government contract in other countries like the UK, US etc. and then subsequently moves on to

the Indian perspective. It analyses the position of government contracts in India, their statutory as well as judicial recognition and the liabilities on the State owing to the said recognition. ("Manupatra Articles" n.d)

- 2) Contractual Liability of State in India- An Analysis, Sonali , It has been said that the question of liability of the State is a matter which brings a feeling of majority response whenever the government assumes the role of a welfare state in any democratic country. Contractual Liability is a liability of the state for the acts done by the state in exercise of its power as a Sovereign as well as in other capacities in the same manner as an individual does. The concept of liability of state for breach of contract is not new in India. The researcher believes that today large number of individuals is entrusted by the Government for various purposes in the form of Government contracts which raises a possibility of Government functioning in an arbitrary manner and the need was felt to regulate and protect the interests of an individual wealth. The researcher further believes that the main reason this issue arises here is to determine whether the individual whose rights are affected or who suffers injury by the Acts of the State is entitled to remedy by the state. There are Constitutional provisions in India which talks about contractual liability of the state.(CONTRACTUAL LIABILITY OF THE STATE IN INDIA.)
- 3) Contractual Liability of Government of India, Posted: 13 Sep 2012, Last revised: 19 Sep 2012 , Jelis Subhan, The subject of government contracts has assumed great importance in the modern times. Today the state is a source of wealth. In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organizations enjoy largess in the form of government contracts, licenses, quotas, mineral rights, jobs, etc. This raises the possibility of exercise of power by a government to dispense largess in an arbitrary manner. It is axiomatic that the government or any of its agencies ought not to be allowed to act arbitrarily and confer benefits on whomsoever they want. Therefore there is a necessity to develop some norms to regulate and protect

individual interest in such wealth and thus structure and discipline the government discretion to confer such benefits. The present article intends to focus upon the contractual liability of the Government of India envisaged in Constitution of India and the provisions of the Indian Contract Act governing the same. (Subhan 2010)

4) CONTRACTUAL LIABILITY OF THE STATE-CONCEPTUAL CLARITY.

The subject of government contracts has assumed great importance in the modern times. Today the state is a source of wealth. In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organizations enjoy largess in the form of government contracts, licenses, quotas, mineral rights, jobs, etc. This raises the possibility of exercise of power by a government to dispense largess in an arbitrary manner. It is axiomatic that the government or any of its agencies ought not to be allowed to act arbitrarily and confer benefits on whomsoever they want. Therefore there is a necessity to develop some norms to regulate and protect the individual interest and at the same time to create working environment to exercise the discretion of the Government to extend the contractual benefits to the other parties to the contract. (CONTRACTUAL LIABILITY OF THE STATE-CONCEPTUAL CLARITY.)

5) Requirement of Government Contract, On February 14, 2015, By sinjini

Contractual liability of the Union of India and States is recognised by the Constitution itself. Article 298 expressly provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and the acquisition, holding and disposal of property and the making of contracts for any purpose. (sinjini 2015)

6) Contractual Liability of the State, Aastha Mehta, APRIL 30, 2014, This is the major point, which is important to administrative law. The ratio behind this case is casts an

obligation on the state to comply with requirements of Article 299, and a duty on people not to attach liability on the government. If contract expressly has a technical defect, for example it was never entered into by any authorized agency, or was not in accordance with governmental norms, the government will have to deal with frivolous allegations from the citizens for contracts which they never contracted into and which never existed to their knowledge also. But does this approach be to escapist from the standpoint of the government, that under the shield of non-compliance with article 299, can genuine causes of citizens be given a go-by.(Admin 2014)

- 7) Liability of State In Contract And In Torts, Prashanti, However, as Article 299 (2) provides neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution or for the purposes of any enactment relating to the Government of India. As soon as a contract is executed with the Government in accordance with Article 299, the whole law of contract as contained in the Indian Contract Act comes into operations. Thus the applications of the private law of contract in the area of public contracts may result in the cases of injustice.(India n.d.)
- 8) Contractual liability of state during the period of east india company, Written by Nidhi Bhargava on 15th June 2017 The year of 1600 is significant for the history of India, for in that year far away from this land a small body of the merchants of London secured from Elizabeth the Great, Queen of England, a Royal charter whereby was constituted the East India Company then named “The Governor and company of Merchants of London trading into the East Indies.” The East India Company entering into India as a trading corporation and for business but due to weak political position in India, it got control over the territory of India. This shows that after entering into India this trading company soon changed its character and by 1765, territorial sovereignty of company on behalf of crown begins; when Lord Clive

obtained the rights of collecting revenue in Bengal, Bihar and Orissa which automatically involved in the administrative function.(Bhargava 2017)

- 9) LIABILITY OF THE ADMINISTRATION IN TORT AND CONTRACT – AN OVERVIEW, Edited and Compiled by :Dr. ANANT KALSE, AUGUST 2016, The term ‘administration’ is used here synonymously with ‘State’ or ‘Government’. To what extent the administration would be liable for the torts committed by its servants is a complex problem especially in developing countries with ever widening State activities. The liability of the government in tort is governed by the principles of public law inherited from British common law and the provisions of the Constitution (LIABILITY OF THE ADMINISTRATION IN TORT AND CONTRACT – AN OVERVIEW.).
- 10) Government Contracts, Written by: Veena Gopalakrishnan Law student, ILS Law College, Pune, The subject of government contracts has assumed great importance in the modern times. Today the state is a source of wealth. In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organizations enjoy largess in the form of government contracts, licenses, quotas, mineral rights, jobs, etc. This raises the possibility of exercise of power by a government to dispense largess in an arbitrary manner. It is axiomatic that the government or any of its agencies ought not to be allowed to act arbitrarily and confer benefits on whomsoever they want. Therefore there is a necessity to develop some norms to regulate and protect individual interest in such wealth and thus structure and discipline the government discretion to confer such benefits.(aDvantage n.d.)
- 11) Contractual Liability of Administration in Turkey, Website By Cindemir Law Office, Turkey, Government’s contract concluded under private law subject to liability of private law. On other hand, contracts governing public services and activities are

subjected to administrative law principles and case-law and administrative liability comes to an issue. In administrative contracts, in case government causes damage via misconduct or negligence against other party, it is obliged. ("Contractual Liability of Administration in Turkey - HG.org" n.d.)

12) The State's Liability in Damages for Administrative Action, Konrad Schiemann, Volume 33, Issue 5 2011, Legislators and judges in the United Kingdom have, over the last forty years, been increasingly conscious of legal developments on the continent of Europe and have seen the merit of some of them. They, like other mortals, tend to react to the stimuli to which they are exposed. One of these was Lord Slynn. The advantage he had was that, by reason of his French wife, his wide exposure to a number of different jurisdictions, and his own indefatigable taste for travel and for meeting scholars from all over the world, his own mind had considerable breadth. Others have benefited from it. ("Contractual Liability of Administration in Turkey - HG.org" n.d.)

13) TORTIOUS LIABILITY OF ADMINISTRATION IN MODERN TIMES ,Posted On November 12, 2011, Wrongful, conduct of such character as to subject the actor to civil liability under tort law. In order to establish that a particular act was tortious, a plaintiff must prove that an actionable wrong existed and that damages ensued from that wrong. The state is a legal entity and not a living entity; it has to act through human agency through its servants. The liability of the state for the tortious acts of its servant that has to be considered. In other words, it refers to when the state can be held vicariously liable for the wrongs committed by its servants. ("TORTIOUS LIABILITY OF ADMINISTRATION IN MODERN TIMES" 2011)

14) Civil liability is divided in two: civil liability in tort and contractual civil liability. These are divided also in tort liability for its own and liability for other's act or liability for things. Civil liability in tort occurs when it have been caused an injury by wrongful act non- contractual. But as tort liability for its own act is not enough in all

cases, to protect the person's interests which have suffered damage, where covered in Civil Code in article 1000 al.2-4 three cases of tort liability for others deeds. The other form of liability contractual liability arising from total or partial non-fulfilment of obligations assumed by contract is a personal liability for its own with contract as a source. The concept of contractual liability for other's act appeared in France only in XXth century Currently in France the majority doctrine recognizes the existence of a principle of contractual liability for other's act, while in Roumania most doctrine as well as tort liability for other's act believes that also contractual liability for other's act exist only in special cases, derogating from common law. The contractual liability autonomy for other's act was underlined also by the non- overlapping principle. This principle means there is no option between contractual or tort liability. Judicial practice has concluded that the victim doesn't have the right, in respect of the same unlawful act, to obtain repairs on two bases, repairs which overlapped would exceed the total amount of the prejudice suffered (Civil liability is divided in two: civil liability in tort and contractual civil liability..)

- 15) Non-Contractual Liability of Member States, Community: Institutions and Individuals for Breaches of Community: Law with a View to a Common Law for Europe, Walter van Gerven First Published March 1, 1994, The non-Contractual liability which hand own wide discretion power which has in three General conditions which is by the present member of the state inflicting damages which has the causal links.(“Website” n.d.)
  
- 16) TORTIOUS LIABILITY OF STATE UNDER THE CONSTITUTION, Justice U.C. Srivastava, Chairman, J.T.R.I., Lucknow The State liability for the acts of omission and commission committed by its servants, not being a static concept, has been governed by written or unwritten laws. Liability of State for the tortious acts of its servants known as tortious liability. of State makes it liable for the acts of omission and commission, voluntary or involuntary and brings it before Court of Law in a claim for non liquidated damages for such acts. This liability is also a branch of Law of Torts. Law of Torts like various other laws has travelled to this country through the

British in India and now stands varied due to being regulated by certain local laws and Constitutional provisions.(TORTIOUS LIABILITY OF STATE UNDER THE CONSTITUTION, Justice U.C. Srivastava,)

- 17) The Non-Contractual Liability of the EC, by Johan Sahlstrand January 1999, The subject of my thesis is the non-contractual liability of the European Community. In all legal systems there are rules governing the situations where governmental non-contractual liability is brought to the fore, i.e. when a public authority exercises its official duties in a way causing damage. Under the EC Treaty the governmental non-contractual liability. (“[No Title]” n.d.)
- 18) State Liability in Damages for Breach of Community Law in the National Courts, Ami Barav, Yearbook of European Law, Volume 16, Issue 1, 1 January 1996, Pages 87–128, The rapid growth and expansion of governmental activities it would seem appropriate to consider the responsibility of the state in contract. In the English sovereign was immune from suit, it was admitted that the king, as the foundation of the justice and equality.(Barav 1996)
- 19) Non-contractual Liability in Damages of Member States for Breach of Community Law, Robert Rebhahn, Community law today provides for remedies if Community law is breached by an institution of the Community or by a Member State. The first case — breach by the Community itself- is provided for and governed by art. 288 (ex art. 215): “In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.” The article leaves the Court of Justice with considerable room for interpretation, and directs it to consider the general principles common to the laws of the Member States. Contractual liability is not discussed here.(Rebhahn 2008)
- 20) Contractual Liability and the CGL Policy, May 2002, by Craig F. Stanovich, Contractual liability is a very important concept in the world of risk management and

insurance. Yet, what is meant by contractual liability and how it actually works is not always well understood. This article is intended to clarify the concept of contractual liability with examples of risk transfer by contract as well as providing an explanation, with illustrations, as to how the contractual liability insurance, found in the commercial general liability (CGL) insurance policy, applies.(Contractual Liability and the CGL Policy,)

- **OBJECTIVES**

- A. To find about exercise of power by the government.
- B. To study about the relationship of contractual liability in constitution of India
- C. To analysis about the relationship of contractual liability in Indian contract Act

- **HYPOTHESIS**

**NULL HYPOTHESIS** – The contractual liability is not applicable properly due to government authorities

**ALTERNATIVE HYPOTHESIS** – The contractual liability is applicable properly for the government authority

- **MATERIALS AND METHOD**

The research is based on doctrinal. The referred sources are like books, journals, E-sources and other secondary sources.

## **POSITION IN OTHER COUNTRIES**

### **England**

As indicated by Common Law, before 1947, the Crown couldn't be sued in a Court on a contract. This benefit was traceable to the times of feudalism when a ruler couldn't be sued in his own

courts which had emerged out of the hypothesis of recklessness of the State as propounded by Roman Law. Another saying which was squeezed into benefit was that the "Lord can't be blamed under any circumstance". A subject could, notwithstanding, look for review against the Crown through an appeal to of right in which he set out his case, and if the imperial fiat was in all actuality, the activity could then be attempted in the Court. The imperial fiat was conceded as is normally done and not as an issue of right, and there was no cure if the fiat was cannot.

The Crown Proceedings Act, 1947, abrogated this system and allowed suits being brought against the Crown in the customary courts to uphold contractual risk, a couple of kinds of contracts being, nonetheless, excepted. It takes after, in this way, that customary procedures presently lie against the Crown for rupture of contract, in those cases in which the appeal to of right prior lay.

### **United States of America**

in the United States, the principle of immunity of the State as a sovereign power was foreign from England. This driven the Congress to institute the Federal Tort Claims Act, 1946, to revoke, generally, the immunity of the Federal Government from Tortious risk, subject to determined exemptions. The utilization of this Act has been additionally changed by the Judiciary in different cases like *Hathley v. U. Section*, *Rayonier v. U. Section*, *India Towing Co. v. U. Section* and so on.

### **Australia**

The Judiciary Act, 1963 sets out the law identifying with government obligation. On account of *Sargood Bros. v. Commonwealth* it was held that an activity lies against the Commonwealth in contract or tort, in the customary way, by a subject or a state. Correspondingly, on account of *Commonwealth v. New South Wales*, it was held that a State might be sued in contract or in tort without its assent. Hence the adage, the King can't take the blame no matter what, has not been connected in Australia.

## CURRENT POSITION IN INDIA WITH CASE LAWS

The words 'had not this Constitution been established' in Article 300(1) demonstrate that the premise of sue-ability of the state in India is historical. so as to value the noteworthiness of these words, we should follow the historical backdrop of the Indian Administration from the season of the East India Company, when the Court was of the view that despite the fact that the East India Company has sovereign forces, on the off chance that it contracts in common limit and on the off chance that it breaks its contract it would be held liable. Later the Government of India Acts (Section 30 of Act of 1915 and Section 175 of Act of 1935) explicitly enabled the Government to go into contracts with private people and the comparing arrangement in the Constitution is Article 299(1). In every one of these Acts it was given that the individual making the contract in the interest of the Government would not be by and by subject in regard thereof.

The Indian Contract Act, 1872 does not recommend any frame for going into contracts. A contract might be oral or in composing. It might be communicated or be inferred from the conditions of the case and the direct of the gatherings. In any case, the position is diverse in regard of Government Contracts. A contract went into by or with the Central or State Government needs to satisfy certain customs as endorsed by Article 299 of the Indian Constitution.

In the case of **State of Bihar v. Majeed**, the Hon'ble Supreme Court held that : "It may be noted that like other contracts, a Government Contract is also governed by the Indian Contract Act, yet it is distinct a thing apart. In addition to the requirements of the Indian Contract Act such as offer, acceptance and consideration, a Government Contract has to comply with the provisions of Article 299. Thus subject to the formalities prescribed by Article 299 the contractual liability of the Central or State Government is same as that of any individual under the ordinary law of contract.".<sup>3</sup>

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<sup>3</sup> AIR 1954 SC 786

**Ram Lal v. State of Punjab** As regards the interpretation of contract, there is no distinction between the contracts to which one of the parties is the Government and between the two private parties.<sup>4</sup>

**Navrattanmal v. State of Rajasthan**, Though there is hardly any distinction between a contract between private parties and Government contract so far as enforceability and interpretation are concerned, yet, some special privileges are accorded to the Government in the shape of special treatment under statutes of limitation.<sup>5</sup>

**Andhra Pradesh v. Challa Ramkrishna Reddy**, Section 112 of the Limitation Act, 1963 contains provision for longer period of limitation of suits on or behalf of the State. The longer limitation period was based on the common law maxim *nulla tempus occurit regi* i.e. no time affects the Crown.<sup>6</sup>

**Article 299 of the Constitution provides :**

"(1) All contracts made in the exercise of executive power of the union or a state shall be expressed to be made by the President or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purpose of any enactment relating to Government of India hereto before in force , nor shall any such contract or assurance on behalf of any of them be personally liable in respect thereof".

It has been held by the Hon'ble Supreme Court in the case of **Bhikaraj Jaipuria v. Union of India**:

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<sup>4</sup> AIR 1966 Punj 436

<sup>5</sup> AIR 1961 SC 1704

<sup>6</sup> (2000) 5 SCC 712

"it is clear from the words "expressed to be made" and "executed" that there must be a formal written contract... The provisions of Article 299(1) are mandatory in character and any contravention thereof nullifies the contract and makes it void. The provisions of Article 299(1) have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against the unauthorised contracts. The provisions are embodied in the constitution on the ground of public policy on the ground of protection of general public and these formalities cannot be waived or dispensed with."<sup>7</sup>

The provisions have been embodied to protect the general public as represented by the government. The terms of the Article have therefore been held to be mandatory and not merely directory. In 1962, the Court repelled the foregoing view taken in the case of **Chaturbhuj v. Moreswar**<sup>8</sup>

**Union of India v. Rallia Ram**, In view of Article 299(1) there can be no implied contract between the government and another person, the reason being that if such implied contracts between the government and another person were allowed, they would in effect make Article 299(1) useless, for then a person who had a contract with the government which was not executed at all in the manner provided under Article 299(1) could get away by saying that an implied contract may be inferred on the facts and the circumstances of the particular case.<sup>9</sup>

It was held by the Hon'ble Supreme Court in the case of **K.P.Chowdhary v.State of Madhya Pradesh** that : "In view of the provisions of Article 299(1) there is no scope for any implied contract. Thus no contract can be implied under this Article.if the contract between the Government and a person is not in-compliance with Article 299(1), it would be no contract at all and would not be enforceable as a contract either by the Government or by the person."<sup>10</sup>

**State of Bihar v. Karam Chand Thapur**, Under Article 299(1), a contract can be entered into on behalf of the Government by a person authorised for the purpose by the President, or the

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<sup>7</sup> AIR 1962 SC 113.

<sup>8</sup> (1954) SCR 817 (835)

<sup>9</sup> AIR 1963 SC 1685

<sup>10</sup> AIR 1967 SC 203: (1966)3 SCR 919

Governor, as the case may be. The authority to execute the contract on behalf of the government may be granted by rules, formal notifications, or special orders; such authority may also be given in respect of a particular contract or contracts by the President/Governor to an officer other than the one notified under the rules. Article 299(1) does not prescribe any particular mode in which authority must be conferred; authorisation may be conferred ad hoc on any person.<sup>11</sup>

### **IMPLIED CONTRACTS WITH THE GOVERNMENT**

It was held by the Hon'ble Supreme Court in the case of **K.P.Chowdhary v State of M.P** "In view of the provisions of Article 299(1) there is no scope for any implied contract. Thus no contract can be implied under this Article. If the contract between the Government and a person is not in compliance with Article 299(1), it would be no contract at all and would not be enforceable as a contract either by the Government or by the person." The Court justified this strict view by saying that if implied contracts between the government and other persons were allowed, they would in effect, make Article 299(1) a dead letter, for then a person who had a contract with the government which was not executed at all in the manner provided under Article 299(1) could get away by pleading that an implied contract be inferred from the facts and circumstances of the case.<sup>12</sup>

**State of Bihar v. K.C. Thapar**, A contract to be valid under Article 299(1) has to be in writing. It does not, however, mean that there should always be a formal legal document between the Government and the other contracting party for the purpose. A valid contract could emerge through correspondence, or through offer and acceptance, if all conditions of Article 299(1) are fulfilled. Under Article 299(1), a contract can be entered into on behalf of the Government by a person authorized for the purpose by the President, or the Governor, as the case may be. The authority to execute the contract on behalf of the government may be granted by rules, formal notifications, or special orders; such authority may also be given in respect of a particular contract or contracts by the President/Governor to an officer other than the one notified under the

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<sup>11</sup> AIR 1962 SC 110

<sup>12</sup> AIR 1967 SC 203

rules. Article 299(1) does not prescribe any particular mode in which authority must be conferred; authorisation may be conferred ad hoc on any person.<sup>13</sup>

### **DEVELOPMENTS IN PRINCIPLES OF CONTRACTUAL LIABILITY**

**Antonio Bulgied v. Capt. Stephen** The sovereign rights of the Government are paramount and it transcends the municipal laws. Eminent domain is an essential attribute of sovereignty. It remains unaffected by law of contract. Though the government is also governed by the law of contract, yet in some special circumstances, the government can rescind a contract without any adverse consequences if it is required for its executive functions.<sup>14</sup>

In India this issue came in the **Indo Afghan case** where the Supreme Court held that: “we are unable to accede to the contention that executive necessity releases the Government from honouring its solemn promises relying on which the citizens have acted to their detriment”.<sup>15</sup>

The plea of executive necessity has been negated in ruling given in **M/s Sterling Comp Ltd. v. M/s M&N Publication**, where the court said that defence of executive necessity cannot be used liberally. Thus Executive necessity can constitute a defence to enforcement of contractual obligation. It can also be used as weapon of offence to rescind contracts. But in both cases it is obligatory for the Government to satisfy the court with facts justifying the existence of the plea. Given the circumstances Judges have sought to limit the application of the doctrine but as the limits want in precision the doctrine is flexible to an extent however the basic core remains constant. The extent of governmental liability is in direct succession of the liability of the East India Company in similar situations. The Article 300 of the Constitution of India points out that the extent of liability of the Union of India and the States will be similar to that of the Dominion of India and the Provinces under the Government of India Act, 1935. The Act of 1935 refers to the Act of 1915 which in turn refers back to the Government of India Act, 1858. Thus, it must be

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<sup>13</sup> AIR 1962 SC 110

<sup>14</sup> AIR 1947 PC 29

<sup>15</sup> AIR 1968 SC 718

referred back to the times of East India Company in order to determine the extent of liability of government today.<sup>16</sup>

In **Bank of Bengal v. United Company**, Sir Charles Grey and Justice Franks of the Supreme Court of Bengal clearly held that the East India Company had no sovereign character to prevent it from being sued for the recovery of interest on three promissory notes on the basis of which the company borrowed money for the efficient prosecution of war for defending and extending the territories of the Crown in India.<sup>17</sup>

**Peacock, C.J. in the P&O Steam Navigation Co. Case**, had asserted that “where a contract is entered in the exercise of powers usually called sovereign powers, no action will lie”.<sup>18</sup>

Unfortunately a doubt was cast on the extent of liability of the East India Company in contract in **Nobin Chunder Dey v. Secretary of State for India**. In this case, a ganja licence was auctioned. Nobin Chunder, the highest bidder, sued for specific performance of the contract. It was held that the suit for specific performance could not succeed because the auction of ganja licence was a method of collection tax which was a sovereign function. It is gratifying to note that this proposition of immunity of the government from liability arising out of contract entered into in exercise of its sovereign power was not followed by the courts in India. There is no denying the fact that government, because of its special responsibilities and position, cannot be equated with any other individual and, therefore, the Government of India Acts, 1858, 1919 and 1935 made special provisions prescribing the manner in which government contracts are to be made.<sup>19</sup>

## SCOPE OF CONTRACTUAL LIABILITY OF GOVERNMENT OF INDIA

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<sup>16</sup> AIR 1996 SC 51

<sup>17</sup> (1831) 1 Bignall's Report 87-181

<sup>18</sup> (1861) 5 Bom HCR App 1

<sup>19</sup> (1876)ILR 1 Cal 11

**State of Bihar v. Sonabati**, In regard to the contractual liability of the Government, the generally accepted view has been that the Government's contractual liability is the same as that of a private individual. In fact, Article 299 of the Constitution leaves no doubt that the contractual liability is the same as that of a private person. Article 299(2) immunises the President, or the Governor, or the person executing any contract on his behalf, from any personal liability in respect of any contract executed for the purposes of the Constitution, or for the purposes of any enactment relating to Government of India in force. This immunity is purely personal and does not immunise the government, as such, from a contractual liability arising under a contract which fulfils the requirements under Article 299(1).<sup>20</sup>

**State of Bihar v. Abdul Majid** The governmental liability is practically the same as that of a private person, subject, of course, to any contract to the contrary. In order to protect the innocent parties, the courts have held that if government derives any benefit under an agreement not fulfilling the requisites of Article 299(1), the Government may be held liable to compensate the other contracting party under S.70 of the Act, on the basis of quasi-contractual liabilities, to the extent of the benefit received. The reason is that it is not just and equitable for the government to retain any benefit it has received under an agreement which does not bind it. Article 299(1) is not nullified if compensation is allowed to the plaintiffs for work actually done or services rendered on a reasonable basis and not on the basis of the terms of the contract.<sup>21</sup>

**State of W.B. v. B.K. Mondal** The Courts have adopted this view on practicable considerations. Modern government is a vast organization. Officers have to enter into a variety of petty contracts, many a time orally or through correspondence without strictly complying with the provisions under Article 299. In such a case, if what has been done is for the benefit of the government for its use and enjoyment, and is otherwise legitimate and proper, Section 70 of the Act should step in and support a claim for compensation made by the contracting parties notwithstanding the fact that the contract in question has not been made as per the requirements of Article 299. If Section 70 was to be held inapplicable, it would lead to extremely unreasonable

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<sup>20</sup> AIR 1954 Pat. 513

<sup>21</sup> AIR 1954 SC 245

circumstances and may even hamper the working of government. Like ordinary citizens even the government should be subject to the provisions of Section 70.<sup>22</sup>

**State of Orissa v. Rajballav** Similarly, if under a contract with a government, a person has obtained any benefit, he can be sued for the dues under Section 70 of the Act though the contract did not conform to Article 299.<sup>23</sup>

**Pannalal v. Deputy Commissioner, and Union of India v. J.K. Gas Plant**, If the Government has made any void contracts it can recover the same under Section 65 of the Act.<sup>32</sup><sup>24</sup>

#### **PRINCIPLES UNDERLYING CONTRACTUAL LIABILITY OF STATE**

- (1) **Reasonableness, fairness** :The principle of reasonableness and discernment which is lawfully and in addition philosophically a fundamental component of equality or non-arbitrariness is anticipated by Article 14 and it must describe each State Action , whether it be under the specialist of law or in exercise of official power without making of law.

**Ramana Dayaram Shetty v. International Airport Authority of India**, It is to be sure inconceivable that in a vote based system administered by the manage of law the official Government or any of its officers ought to have discretionary power over the interests of the individual. Each activity of the official Government must be educated with reason and ought to be free from arbitrariness. That is the very quintessence of the control of law and its exposed insignificant necessity. Also, to the utilization of this principle it has no effect whether the activity of the power includes love of some privilege or refusal of some privilege.<sup>25</sup>

In the case of **Y. Konda Reddy v. State of A.P** it was held that like all its actions, the action even in the contractual field is bound to be fair. It is settled law that the rights and

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<sup>22</sup> AIR 1962 SC 152

<sup>23</sup> AIR 1976 Ori 79

<sup>24</sup> AIR 1973 SC 1174 and AIR 1980 SC 1330

<sup>25</sup> AIR 1979 SC 1628

obligations arising out of the contract after entering into the same is regulated by terms and conditions of the contract itself.<sup>26</sup> In a democratic society governed by the rule of law, it is the duty of the State to do what is **Hindustan Sugar Mills v. State of Rajasthan**, In a democratic society governed by the Rule of law, it is the duty of the State to do what is fair and just to the citizen and the state should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand.<sup>27</sup>

- (2) **Public Interest:** Public interest is the vital thought. There might be circumstances where there are convincing reasons requiring the takeoff from the rule, yet there the explanations behind the takeoff must be level headed and ought not be suggestive of discrimination. Each activity of the public authority or of the individual acting in public interest or any demonstration that offers ascend to public element, ought to be guided by public interest

**LIC v. Consumer Education and Research Centre**, If activities bear symbol of public law element or public character they are agreeable to judicial review and the validity of such activity would be tried on the blacksmith's iron of Article 14. Qualification between public law and private law remedy is currently limited down.<sup>28</sup>

**Shri Sachidanand Pandey v. State of W.B.**, Appearance of public equity is as vital as doing equity. Nothing ought to be done which gives an appearance of bias, jobbery or nepotism.<sup>29</sup>

**State v. P.C. Mishra**, Person holding public office must exercise his energy in public interest and for public good.<sup>30</sup>

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<sup>26</sup> AIR 1997 AP 121

<sup>27</sup> AIR 1981 SC 1681

<sup>28</sup> (1995) 5 SCC 482

<sup>29</sup> AIR 1987 SC 1109

<sup>30</sup> 1995 Supp (4) SCC 139

(3) **Contractual Liability:** Article 299(2) vaccinates the President, or the Governor, or the person executing any contract for his sake, from any personal liability in regard of any contract executed for the motivations behind the Constitution, or for the reasons for any institution identifying with Government of India in compel. **State of Bihar v. Sonabati**, This invulnerability is absolutely personal and does not inoculate the government, accordingly, from a contractual liability emerging under a contract which satisfies the prerequisites under Article 299(1).<sup>31</sup> **State of Bihar v. Abdul Majid**, The governmental liability is for all intents and purposes the same as that of a private person, subject, obviously, to any contract to the contrary.<sup>32</sup>

The Courts have received this view on practicable contemplations. Present day government is a huge association. Officers need to go into an assortment of unimportant contracts, numerous a period orally or through correspondence without entirely conforming to the arrangements under Article 299. In such a case, if what has been done is for the advantage of the government for its utilization and pleasure, and is generally real and appropriate, Section 70 of the Indian Contract Act, 1872 should venture in and bolster a claim for remuneration made by the contracting parties despite the way that the contract being referred to has not been made according to the prerequisites of Article 299.

**State of West Bengal v. B.K. Mondal**, In the event that Section 70 was to be held inapplicable, it would prompt to a great degree outlandish conditions and may considerably hamper the working of government. Like standard natives even the government ought to be liable to the arrangements of Section 70.<sup>33</sup>

**State of Orissa v. Rajballav**, So also, if under a contract with a government, a person has acquired any advantage, he can be sued for the levy under Section 70 of the Act however the contract did not affirm to Article 299.<sup>34</sup>

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<sup>31</sup> AIR 1954 Pat 51

<sup>32</sup> AIR 1954 SC 245: 1954 SCR 786

<sup>33</sup> AIR 1962 SC 152

<sup>34</sup> AIR 1976 Ori 79

**Pannalal v. Deputy Commissioner**, If the Government has made any void contracts it can recoup the same under Section 65 of the Act.<sup>35</sup>

- **RECOMMENDATIONS AND CONCLUSION**

Steady implementation and enforcement of administrative system are likewise imperative. The fundamental test in India remains enforcement and the way that there is a sure level of exemption for those disregarding the law. Involvement in India demonstrates that while great laws and arrangements can be received by the central government, implementation is regularly a test. The State can't , along these lines , act arbitrarily in going into relationship, contractual or generally with a third party, yet its action must fit in with some standard or standard which is sane a non-prejudicial. The action of the Executive Government ought to be educated with reason and ought to be free from discretion. The trial of liability of the State ought not be the source of the capacities but rather the idea of the action carried on by the State. Notwithstanding the reasonable order for enactment gave under Article 300, nothing has done in such manner. Indeed, even the Government (Liability in Tort Bill), 1967 which was presented in the Parliament had not been passed because of the opposition of different State Governments.<sup>44</sup> The Government was of the view that the money related weight on the State would be more than it could deal with. Without a reasonable and succinct statute that plainly characterised the contractual liability of the State, the proclamations made by the Judiciary accept all the more significance. Judicial mission in administrative issues needs to locate the correct harmony between the administrative attentiveness to choose matters contractual or political in nature, or issues of social strategy and the need to remedy any unfairness. A State, when it goes into an agreement, must do as such decently without separation and without uncalled for strategy; and its action is liable to judicial review under Article 14 of the Constitution of India. The judicial power of review is practiced to rein any unbridled executive working.

The limitation has two contemporary significances. One is the ambit of judicial intercession;

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<sup>35</sup> AIR 1973 SC 1174

alternate covers the extent of the Court's capacity to suppress an administrative choice on its benefits. These restrictions bear the sign of judicial control over administrative action. Judicial review is worried about not reviewing the benefits of the choice in help of which the application for judicial review is made, yet the basic leadership process itself and in this way judicial review can be an adequate device to choose the ambit of contractual liability of the State.

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