

# Contractual Liability of the Government

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# Contractual Liability of Government

- Introduction:
- History of Govt liability in England—  
expansion of govt functions –exemption of  
govt liability not possible.
- No suit could be filed against King in Courts  
as all courts were His courts.
- Crown proceeding Act 1947—King/Govt.  
made answerable and liable to Courts

# History in India

- Maxim of 'King can do no wrong never followed in India .
- Even prior to Constitution, in the case ***Moodalay v Morton(1785)*** Sc of Calcutta held the East India Co. was subject to jurisdiction of municipal courts
- Liability recognized in Statutes
- Provisions made in Govt. of India Act 1833, 1858, 1915, 1935.

# Object of imposing and determining liability

- Protection of individual person vis -a-vis Govt
- Due notice to the contracting individual about the officer's capacity and limits of liability.
- Protection of Govt money as liability under unauthorised and invalid contract not taken by the govt avoiding waste of money.

# Constitutional provisions

- **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.
- Art 299 –prescribes mode and manner of execution of such contracts.

# Art 299 :

- Every contract must be expressed to be made by the President or the Governor
- Every contract must be executed by a person authorized by the President / Governor.
- Every contract must be expressed in the name of President/Governor.

# Every contract must be expressed to be made by the President or the Governor

- Every contract must be **in writing**.
- Does not require any formal/technical document.
- In ***Union of India v A.L. Rallia Ram AIR 1963 SC***—
- Issue –letter of acceptance of tender –valid contract or not ?
- Held –No formality required –acceptance –binding contract .
  
- Expressed to be made by President/ Governor.—  
Information/Notice to contracting party.
- In ***K C Choudhary v State of MP AIR 1967 SC 203*** Held  
there cannot be implied contract otherwise Art 299 will  
become useless.

# Every contract must be executed by a person authorized by the President / Governor.

- Valid, legal and binding contract only if executed by authorised person
- In [*Union of India v N K (P) Ltd* ]
- Contract entered into by Secretary though it was authorized to the Director, Railway Board. Held contract invalid as not Secretary not authorised for said purpose and hence could not bind the Govt.
- *Bhikaraj Jaipuria v Union of India 1962 SC*
- Contract entered into by Div Superintendent of Railway –No specific authority --

# Every contract must be expressed in the name of President/Governor

- For a valid contract binding the govt; it should be **expressed** to be made **on behalf of** or in name of President / Governor.
- The representative capacity of person entering the contract must be made clear to secure interest of individual contracting.
- Essential requirement even if contract entered by authorised person.
- ***Bhikaraj Jaipuria v Union of India 1962 SC***
- Contract not expressed in name of President --invalid

# Every contract must be expressed in the name of President/Governor

- In [**State of Punjab v Om Prakash Baldev** ] AIR 1988 SC2149

PWD engineer authorized to execute contract for building bridge. He signed the acceptance letter for the same but did not mention it in name of Governor. Held that contract, though signed by authorized person, but was not valid according to Art 299.

# Art 299: Effect of Non Compliance

- Requirements are mandatory  
-----hence if not complied, contract is invalid and ineffectual.
- Whether Ratification is possible of invalid contracts?
- No. In [*Mulumchand v State of MP*] Held if contract not according to Art 299 –no contract at all in eyes of law –no question of ratification arises.
- Sec 196 of Indian Contract Act does not apply

# Quasi Contractual Liability

- Contract not in accordance with Art 299 –NOT BINDING ON GOVT
- But –to save loss of innocent persons Sec 70 of Indian Contract Act is invoked
- *State of WB v B K Mondal AIR 1962 SC*
- On request of govt officer the contractor constructed a building --- building in possession and use of govt ---non payment by govt –on contention that contract not according to Art 299-hence not enforceable---SC invoked Sec 70 of Indian Contract Act –Held --Govt is liable to pay compensation on basis of quasi contract and unjust enrichment
- *R D Shetty v International Airport Authority 1979 SC*
- Executive actions should be free from arbitrariness oth
- **Conclusion --**