



Government Liability under Contract



Contract - Meaning



- **An agreement enforceable by law is a contract”**
- **All agreements are contracts if they are made by the**
 - **free consent of the parties,**
 - **competent to contract,**
 - **for a lawful consideration,**
 - **with a lawful object,**
 - **are not hereby expressly declared to be void.**
- **The Act does not prescribe any form for entering into contracts.**
- **A contract may be oral or in writing.**
- **It may be expressed or implied from the facts of the case.**

- **A contract to which the Central or State Government Government is a party is called a 'Government Contract'.**
- **like other contracts, a Government Contract is also governed by the Indian Contract Act.**
- **In addition to the requirements of the Act such as offer, acceptance and consideration, a Government Contract has to comply with the provisions of Article 299.**





Constitutional Requirements



- **Article 298 of Constitution** gives power to the executive to enter into contracts
- Under Article 298 executive power of the Union of India and the States extends
 - to carry on any trade or business,
 - acquire, hold and dispose property and
 - make contracts for any purpose
- Further for entering into contract, the formal requirements, the mode and manner are provided by Article 299.



Article 299(1)

“All contracts made in the exercise of the executive power of the Union or of 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 persons and in such manner as he may direct or authorize.”



Requirements of Govt Contract

- Article 299(1) prescribes the mode or manner of execution of govt contracts.
- According to Article 299 a contract is binding on govt if three conditions are fulfilled—
 - the contract must be expressed to be made by the President or the Governor of the state as the case may be;
 - the contract must be executed on behalf of the President/Governor as the case may be; and
 - Execution must be by such person and in such manner as the President or the Governor of the case as the case may be, may direct or authorize.

- **Article 299(1) does not prescribe any particular mode in which authority must be conferred;**
- **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.**
- **Lack of proper authority would render the contract invalid**

- **The contract must be expressed in the name of the President or the Governor, as the case may be.**
- **Thus, even though such a contract is made by an officer authorized by the Government in this behalf,**
- **it is still not enforceable against the Government if it is not expressed to be made on behalf of the President or the Governor**

Article 299(1) - Mandatory

- For government contracts the provisions of Article 299(1) are mandatory in character
- The provisions are not for the sake of mere form but for safeguarding the Government against the unauthorized contracts.
- The formalities are embodied on the ground of public policy for protection of general public represented by govt.
- Any contravention of Article 299 nullifies the contract and makes it void.
- Neither the government can be sued nor can the government enforce such a contract against the other contracting party

- there can be no implied contract between the govt and another person
- if such implied contracts b/w the government and another person were allowed, they would in effect make Article 299(1) useless,
- A contract to be valid under Article 299(1) has to be in writing.
- However, the expression "executed" does not by itself contemplate execution of a formal legal document.
- A valid contract could emerge through correspondence, or through offer and acceptance, if all conditions of Article 299(1) are fulfilled



Judicial Attitude to Article 299

Let's start with the first set of slides

Judicial Attitude to Article 299

- A strict compliance with these conditions may be inequitable to private parties, and at the same time, make government operations extremely difficult.
- To balance two motivations:
 - to protect the Govt from unauthorized contracts; and
 - to safeguard the interests of unsuspecting parties who enter into contracts with government officials without fulfilling all the formalities laid down in the Constitution.



Valid contract from Correspondence

- Where there is a tender for the purchase of goods in pursuance of a tender notice
- notification or statement inviting tenders issued by or on behalf of the President or the Governor,
- and acceptance in writing which is expressed to be made in the name of the President or Governor and
- Executed on his behalf by a person authorized in that behalf

Non-compliance with Article 299(1)- Implications

- the contract which does not comply with provisions of Article 299(1) is not enforceable in a court of law at the instance of any of the contracting parties.
- However, to protect innocent persons, courts have applied the provisions of Section 70 of the Indian Contract Act, 1872
- and held the Government liable to compensate the other contracting party on the basis of quasi-contractual liability.

Section 70 of the Indian Contract Act, 1872

Three conditions for application of Section 70:

- A person must have lawfully done something for another person or deliver something to him;
- He must not have intended to do such act gratuitously; and
- The other person must have accepted the act or enjoyed the benefit.



Thanks!

Any questions?