

CONTRACTUAL LIABILITY OF GOVERNMENT IN INDIAN LAW

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ABSTRACT

IN THE CAPITALIST GLOBALISED WORLD OF TODAY, GOVERNMENTS KEEP THEIR PROMISES JUST LIKE ANYONE ELSE. IN THE TIMES WHEN BRITISHERS RULED INDIA, CONTRACTS INVOLVING THE GOVERNMENT WERE GOVERNED BY ENGLISH COMMON LAW, WHICH OFTEN PROVIDED SOVEREIGN IMMUNITY. AFTER INDEPENDENCE, THE INDIAN CONTRACT ACT, 1872, BECAME THE KEY LAW GOVERNING CONTRACTS, INCLUDING THE ONES INVOLVING GOVERNMENT AS A PARTY. ARTICLE 299 OF THE INDIAN CONSTITUTION LAYS DOWN CONDITIONS FOR VALID GOVERNMENT CONTRACTS. NOW, CONTRACTUAL LIABILITY OF THE GOVERNMENT HAS EVOLVED OVER TIME, TODAY ACCOUNTABILITY IS ENSURED IN PUBLIC PROCUREMENT AND SERVICE AGREEMENTS. COURTS HAVE PLAYED SIGNIFICANT ROLE IN BALANCING GOVERNMENTS FUNCTIONS WITH THE RIGHTS OF CITIZENS. GOVERNMENT CONTRACTS ARE LEGALLY BINDING AGREEMENTS BETWEEN THE GOVERNMENT(STATE) AS ONE PARTY AND PRIVATE PARTIES. THESE CONTRACTS MUST ADHERE TO CERTAIN FORMAL REQUIREMENTS AND THEY MUST UPHOLD FAIRNESS, TRANSPARENCY, AND ACCOUNTABILITY. ISSUES LIKE LACK OF TRANSPARENCY, ARBITRARY DECISIONS, AND NON-COMPLIANCE WITH THE LEGAL PROCEDURES HAVE VERY OFTEN LED TO DISPUTES. THE CHALLENGE IS IN PROVING THAT PUBLIC FUND IS SPENT EFFICIENTLY AND LAWFULLY. STRENGTHENING LEGAL SAFEGUARDS AND TRANSPARENCY IN PROCEDURE IN GOVERNMENT CONTRACTS WILL LEAD TO REDUCED DISPUTES AND FOSTER GREATER ACCOUNTABILITY. THE REFORMS NEED TO INCLUDE MANDATORY DIGITAL RECORDS FOR CONTRACT MANAGEMENT, STRONGER MONITORING OF PROCUREMENT PROCESSES, AND CLEAR DISPUTE RESOLUTION SYSTEMS. THIS ARTICLE EXPLORES THE GOVERNMENT CONTRACTUAL LIABILITY UNDER INDIAN LAW, ANALYSES KEY CHALLENGES, AND PROPOSES REFORMS FOR IMPROVING TRANSPARENCY AND EFFICIENCY IN PUBLIC CONTRACTS

KEY WORDS: GOVERNMENT CONTRACTS, PUBLIC PROCUREMENT, CONTRACTUAL LIABILITY, ARTICLE 299, TRANSPARENCY, DISPUTE RESOLUTION

IN THE TIMES OF DEMOCRATIC GOVERNANCE, CONTRACTS ARE NOT ONLY LEGAL INSTRUMENTS BUT THE FOUNDATION OF TRUST BETWEEN THE STATE AND ITS CITIZENS. AS THE RENOWNED LEGAL SCHOLAR H.W.R. WADE HAS CORRECTLY NOTED, “THE GOVERNMENT MUST BE BOUND BY ITS PROMISES, FOR THE RULE OF LAW DEMANDS NO LESS.”¹³⁵⁹ THIS STATEMENT HIGHLIGHTS THE FUNDAMENTAL PRINCIPLE THAT GOVERNMENTS, LIKE PRIVATE ENTITIES, MUST HONOUR THEIR COMMITMENTS IN ORDER TO MAINTAIN PUBLIC CONFIDENCE AND TO MAKE

SURE THAT THE SOCIETY FUNCTIONS SMOOTHLY. IN TODAY’S FAST-PACED TIMES, WHERE PUBLIC-PRIVATE PARTNERSHIPS AND GOVERNMENT PROCUREMENTS ARE INTEGRAL TO THE ECONOMIC AND SOCIAL DEVELOPMENT, THE CONTRACTUAL LIABILITY OF THE GOVERNMENT IS NOW A CRUCIAL AREA OF STUDY. BROKEN CONTRACTS CAN MAKE ONE LOSE MORE THAN JUST MONEY; THEY CAN DESTROY TRUST, HINDER DEVELOPMENT, AND LEAD TO PROLONGED LEGAL DISPUTES.

GOVERNMENT CONTRACTS, DEFINED AS LEGALLY BINDING AGREEMENTS BETWEEN THE STATE AND PRIVATE PARTIES, PLAY A PIVOTAL ROLE

¹³⁵⁹ H.W.R. Wade & C.F. Forsyth, Administrative Law 20 (11th ed. 2014)

IN SHAPING INFRASTRUCTURE, PUBLIC SERVICES, AND ECONOMIC POLICIES. THESE CONTRACTS ARE GOVERNED BY A UNIQUE SET OF RULES AND PRINCIPLES THAT BALANCE THE STATE'S SOVEREIGN FUNCTIONS WITH THE RIGHTS OF CITIZENS. HISTORICALLY, THE CONTRACTUAL LIABILITY OF THE GOVERNMENT IN INDIA WAS INFLUENCED BY ENGLISH COMMON LAW, WHICH OFTEN GRANTED THE CROWN IMMUNITY FROM LEGAL ACTIONS¹³⁶⁰. HOWEVER, POST-INDEPENDENCE, THE INDIAN LEGAL FRAMEWORK UNDERWENT SIGNIFICANT CHANGES TO ENSURE ACCOUNTABILITY AND FAIRNESS IN GOVERNMENT DEALINGS. THE INDIAN CONTRACT ACT, 1872¹³⁶¹, BECAME THE CORNERSTONE OF CONTRACT LAW, WHILE ARTICLE 299 OF THE INDIAN CONSTITUTION¹³⁶² LAID DOWN SPECIFIC CONDITIONS FOR THE VALIDITY OF GOVERNMENT CONTRACTS.

THE RELEVANCE OF THIS TOPIC IS IN ITS INTERRELATION BETWEEN LAW, GOVERNANCE, AND PUBLIC POLICY. GOVERNMENT CONTRACTS ARE NOT ONLY ABOUT LEGAL FORMALITIES; THEY ARE ABOUT ENSURING TRANSPARENCY, ACCOUNTABILITY, AND EFFECTIVELY USING PUBLIC FUNDS. AS JUSTICE V.R. KRISHNA IYER ONCE REMARKED, "PUBLIC ACCOUNTABILITY IS THE LIFEBLOOD OF CONSTITUTIONAL GOVERNANCE¹³⁶³." THIS STATEMENT SHOWS THE IMPORTANCE OF HOLDING THE GOVERNMENT ACCOUNTABLE FOR ITS CONTRACTUAL OBLIGATIONS, ESPECIALLY IN A DEMOCRATIC SOCIETY WHERE PUBLIC TRUST IS OF UTMOST IMPORTANCE. OVER THE YEARS, INDIAN COURTS HAVE PLAYED A CRITICAL ROLE IN INTERPRETING AND ENFORCING THE PRINCIPLES OF CONTRACTUAL LIABILITY, MAKING SURE THAT THE GOVERNMENT DOES NOT MISUSE ITS AUTHORITY WHILE FULFILLING ITS OBLIGATIONS.

HOWEVER, EVEN WITH THIS LEGAL FRAMEWORK, CHALLENGES PERSIST. ISSUES SUCH AS LACK OF TRANSPARENCY, ARBITRARY DECISION-MAKING, AND NON-COMPLIANCE WITH LEGAL PROCEDURES HAVE RESULTED IN NUMEROUS

DISPUTES. THESE CHALLENGES UNDERMINE THE EFFICIENCY OF PUBLIC PROCUREMENT AND ALSO RAISE CONCERNS ABOUT THE MISUSE OF PUBLIC FUNDS. THE PROBLEM IS EXACERBATED BY THE ABSENCE OF ROBUST MECHANISMS FOR DISPUTE RESOLUTION AND MONITORING. THIS RAISES AN IMPORTANT QUESTION: HOW CAN THE LAW GOVERNING GOVERNMENT CONTRACTS BE STRENGTHENED TO MAKE SURE THAT THERE IS GREATER ACCOUNTABILITY AND TRANSPARENCY?

HISTORICAL EVOLUTION OF GOVERNMENT CONTRACTS IN INDIA

THE DEVELOPMENT OF GOVERNMENT CONTRACTS IN INDIA IS THE REFLECTION OF COUNTRY'S LEGAL AND CONSTITUTIONAL JOURNEY, SHAPED BY COLONIAL LEGACIES AND POST-INDEPENDENCE REFORMS. AS LEGAL SCHOLAR UPENDRA BAXI APTLY NOTED, "THE HISTORY OF GOVERNMENT CONTRACTS IN INDIA IS NOT JUST A LEGAL NARRATIVE BUT A STORY OF POWER, ACCOUNTABILITY, AND THE RULE OF LAW¹³⁶⁴." THIS STATEMENT UNDERLINES THE WORTH OF UNDERSTANDING HOW THE PRINCIPLES GOVERNING GOVERNMENT CONTRACTS HAVE GROWN OVER TIME, BALANCING THE STATE'S SOVEREIGN AUTHORITY WITH FAIRNESS AND TRANSPARENCY. FROM THE COLONIAL ERA'S DEPENDENCE ON ENGLISH COMMON LAW TO THE POST-INDEPENDENCE CONSTITUTIONAL FRAMEWORK, THE HISTORICAL DEVELOPMENT OF GOVERNMENT CONTRACTS IN INDIA SHOWS THE COUNTRY'S COMMITMENT TO ENSURING ACCOUNTABILITY IN PUBLIC DEALINGS.

PRE-INDEPENDENCE ERA: INFLUENCE OF ENGLISH COMMON LAW AND SOVEREIGN IMMUNITY

DURING THE BRITISH COLONIAL PERIOD, THE CONTRACTUAL LIABILITY OF THE GOVERNMENT WAS GOVERNED BY ENGLISH COMMON LAW, WHICH WAS INCLINED TOWARDS THE DOCTRINE OF SOVEREIGN IMMUNITY. THIS DOCTRINE, ROOTED IN THE MAXIM "THE KING CAN DO NO WRONG¹³⁶⁵," GAVE THE COLONIAL GOVERNMENT IMMUNITY FROM LEGAL ACTIONS UNLESS IT GAVE CONSENT TO BE SUED. AS A RESULT, PRIVATE PARTIES

¹³⁶⁰ Sir William Wade, Sovereign Immunity in English Law, 76 L.Q. Rev. 217 (1960)

¹³⁶¹ Indian Contract Act, No. 9 of 1872, India Code (1872)

¹³⁶² INDIA CONST. art. 299

¹³⁶³ V.R. Krishna Iyer, Constitutional Miscellany 55 (1995)

¹³⁶⁴ Upendra Baxi, The Indian Supreme Court and Politics 90 (1980)

¹³⁶⁵ J.H. Baker, An Introduction to English Legal History 505 (5th ed. 2019)

ENTERING INTO CONTRACTS WITH THE GOVERNMENT HAD VERY LITTLE LEGAL RECOURSE IN CASE OF DISPUTE OR BREACH.

THE APPLICATION OF ENGLISH COMMON LAW IN INDIA WAS MADE OFFICIAL THROUGH LAWS SUCH AS THE GOVERNMENT OF INDIA ACT, 1858¹³⁶⁶, AND LATER THE GOVERNMENT OF INDIA ACT, 1935¹³⁶⁷. THESE STATUTES PROVIDED WITH THE LEGAL FRAMEWORK FOR GOVERNMENT CONTRACTS BUT OFTEN GAVE PRIORITY TO THE INTERESTS OF THE COLONIAL ADMINISTRATION OVER THOSE OF INDIANS. FOR EXAMPLE, CONTRACTS RELATED TO PUBLIC INFRASTRUCTURE, LIKE RAILWAYS AND TELEGRAPHS, WERE EXECUTED UNDER SUCH TERMS AS FAVOURABLE TO THE BRITISH GOVERNMENT, OFTEN AT THE COST OF INDIAN CONTRACTORS AND WORKERS. THIS LED TO DISCONTENT AND CALLS FOR REFORM, WHICH GAINED MOMENTUM THROUGHOUT THE INDEPENDENCE MOVEMENT.

DEVELOPMENTS POST-INDEPENDENCE: THE INDIAN CONTRACT ACT, 1872, AND ARTICLE 299

WITH INDIA'S INDEPENDENCE IN 1947, THE LEGAL FRAMEWORK GOVERNING GOVERNMENT CONTRACTS WENT THROUGH IMPORTANT CHANGES. THE INDIAN CONTRACT ACT, 1872, WHICH HAD BEEN IMPLEMENTED SINCE THE COLONIAL TIMES, CONTINUED AS THE PRIMARY LEGISLATION FOR CONTRACTS, INCLUDING ONCE INVOLVING THE STATE. BUT, THE ADOPTION OF THE INDIAN CONSTITUTION IN 1950¹³⁶⁸ INTRODUCED NEW PROVISIONS TO GUARANTEE ACCOUNTABILITY AND TRANSPARENCY IN GOVERNMENT CONTACTS.

ARTICLE 299 OF THE CONSTITUTION LAID DOWN DEFINITE CONDITIONS FOR THE VALIDITY OF GOVERNMENT CONTRACTS. IT MANDATED THAT ALL CONTRACTS MADE IN THE EXERCISE OF THE EXECUTIVE POWER OF THE UNION OR A STATE MUST –

BE EXPRESSED IN THE NAME OF THE PRESIDENT OR THE GOVERNOR, AS THE CASE MAY BE.

BE EXECUTED BY AN AUTHORIZED OFFICER.

THIS PROVISION WAS INTRODUCED TO PREVENT ARBITRARY ACTIONS AND ENSURE THAT GOVERNMENT CONTRACTS WERE MADE IN A LAWFUL AND TRANSPARENT MANNER. AS LEGAL EXPERT H.M. SEERVAI OBSERVED, "ARTICLE 299 IS A CONSTITUTIONAL SAFEGUARD AGAINST THE MISUSE OF EXECUTIVE POWER IN CONTRACTUAL MATTERS."¹³⁶⁹

JUDICIAL EVOLUTION: CASES THAT SHAPED GOVERNMENT CONTRACTUAL LIABILITY

THE INDIAN JUDICIARY HAS PLAYED A KEY ROLE IN INTERPRETING AND SHAPING THE PRINCIPLES OF CONTRACTUAL LIABILITY OF GOVERNMENT. OVER THE YEARS, SEVERAL LANDMARK CASES HAVE CLARIFIED THE SCOPE AND APPLICATION OF ARTICLE 299 AND OTHER RELEVANT LAWS.

ONE OF THE EARLIEST AND MOST SIGNIFICANT CASES WAS K.P. CHOWDHRY V. STATE OF MADHYA PRADESH (1967)¹³⁷⁰, IN THIS CASE THE SUPREME COURT HELD THAT CONTRACTS NOT COMPLYING WITH THE FORMALITIES PRESCRIBED UNDER ARTICLE 299 WERE VOID AND UNENFORCEABLE. THIS JUDGMENT UNDERLINED THE IMPORTANCE OF ADHERING TO CONSTITUTIONAL PROVISIONS IN GOVERNMENT CONTRACTS.

ANOTHER LANDMARK CASE WAS STATE OF BIHAR V. MAJEED (1954)¹³⁷¹, HERE THE COURT UNDERScoreD THAT THE GOVERNMENT, WHILE ENTERING INTO CONTRACTS, MUST ACT FAIRLY AND REASONABLY, WITHOUT ARBITRARINESS OR MALAFIDE INTENTIONS. THIS CASE LAID THE FOUNDATION FOR THE PRINCIPLE THAT STATE, DESPITE ITS SOVEREIGN AUTHORITY, IS BOUND BY THE SAME OBLIGATIONS AS PRIVATE PARTIES.

THE JUDICIARY CONTINUES TO PLAY A PROACTIVE ROLE IN ENSURING ACCOUNTABILITY IN GOVERNMENT CONTRACTS. CASES LIKE TATA CELLULAR V. UNION OF INDIA (1994)¹³⁷² AND RELIANCE ENERGY LTD. V. MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD. (2007)¹³⁷³ HAVE REINFORCED THE PRINCIPLES OF

¹³⁶⁹ H.M. Seervai, Constitutional Law of India 2370 (4th ed. 1991)

¹³⁷⁰ K.P. Chowdhry v. State of M.P., AIR 1967 SC 203

¹³⁷¹ State of Bihar v. Majeed, AIR 1954 SC 786

¹³⁷² Tata Cellular v. Union of India, (1994) 6 SCC 651

¹³⁷³ Reliance Energy Ltd. v. Maharashtra State Road Dev. Corp. Ltd., (2007) 8 SCC 1

¹³⁶⁶ Government of India Act, 1858, 21 & 22 Vict. c. 106 (U.K.)

¹³⁶⁷ Government of India Act, 1935, 25 & 26 Geo. 5 c. 42 (U.K.)

¹³⁶⁸ INDIA CONST. (1950)

TRANSPARENCY, FAIRNESS, AND NON-ARBITRARINESS IN PUBLIC PROCUREMENT AND CONTRACTS.

CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING GOVERNMENT CONTRACTS

THE CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING GOVERNMENT CONTRACTS IN INDIA IS A COMBINATION OF STATUTORY PROVISIONS, CONSTITUTIONAL MANDATES, AND JUDICIAL INTERPRETATIONS THIS FRAMEWORK ENSURES THAT GOVERNMENT CONTRACTS ARE LEGALLY ENFORCEABLE AND ADHERE TO PRINCIPLES OF TRANSPARENCY, ACCOUNTABILITY, AND PUBLIC INTEREST.

ARTICLE 299 OF THE INDIAN CONSTITUTION: CONDITIONS FOR A VALID GOVERNMENT CONTRACT

ARTICLE 299 OF THE INDIAN CONSTITUTION LAYS DOWN THE MANDATORY CONDITIONS FOR THE VALIDITY OF GOVERNMENT CONTRACTS: ALL CONTRACTS MADE IN THE EXERCISE OF THE EXECUTIVE POWER OF THE UNION OR A STATE MUST –

BE EXPRESSED IN THE NAME OF THE PRESIDENT OR THE GOVERNOR, AS THE CASE MAY BE.

IT MUST BE EXECUTED BY AN AUTHORIZED OFFICER.

THESE CONDITIONS ARE OBLIGATORY, AND ANY DEVIATION MAKES THE CONTRACT VOID. FOR EXAMPLE, IN STATE OF BIHAR V. KARAM CHAND THAPAR & BROS. LTD. (1962)¹³⁷⁴, THE SUPREME COURT HELD THAT A CONTRACT NOT EXECUTED IN THE NAME OF THE PRESIDENT OR GOVERNOR IS INVALID.

INDIAN CONTRACT ACT, 1872: APPLICABILITY AND LIMITATIONS

THE INDIAN CONTRACT ACT, 1872, GOVERNS THE GENERAL PRINCIPLES OF CONTRACT LAW IN INDIA, AND ITS PROVISIONS SUCH AS OFFER, ACCEPTANCE, CONSIDERATION, CAPACITY, AND FREE CONSENT APPLY TO CONTRACTS INVOLVING THE GOVERNMENT. HOWEVER, GOVERNMENT CONTRACTS MUST ALSO SATISFY

CONSTITUTIONAL FORMALITIES UNDER ARTICLE 299 AND MAY BE INFLUENCED BY PUBLIC-INTEREST CONSIDERATIONS; THIS CAN AFFECT THE APPLICATION OF CERTAIN DOCTRINES OR REMEDIES. FOR INSTANCE, THE DOCTRINE OF FRUSTRATION UNDER SECTION 56 OF THE CONTRACT ACT REMAINS AVAILABLE IN RESPECT OF GOVERNMENT CONTRACTS, BUT COURTS MAY TAKE PUBLIC-INTEREST CONSIDERATIONS INTO ACCOUNT WHEN APPLYING THE DOCTRINE AND DECIDING APPROPRIATE RELIEFS.

OTHER RELEVANT LAWS :-

SEVERAL OTHER LAWS INFLUENCE GOVERNMENT CONTRACTS, INCLUDING:

GENERAL CLAUSES ACT, 1897¹³⁷⁵: PROVIDES GENERAL INTERPRETIVE RULES AND CERTAIN STATUTORY DEFINITIONS (FOR EXAMPLE, “CENTRAL GOVERNMENT” AND “STATE GOVERNMENT”) THAT ASSIST IN THE INTERPRETATION OF OTHER ENACTMENTS. IT DOES NOT DEFINE “CONTRACT” NOR DOES IT, BY ITSELF, DETERMINE WHICH OFFICERS MAY EXECUTE GOVERNMENT CONTRACTS – EXECUTION AND AUTHORITY ARE GOVERNED BY ARTICLE 299 AND APPLICABLE DELEGATION INSTRUMENTS OR SERVICE RULES.

ARBITRATION AND CONCILIATION ACT, 1996¹³⁷⁶: ENABLES DISPUTE RESOLUTION IN GOVERNMENT CONTRACTS. THE ACT PROVIDES A FRAMEWORK FOR ARBITRATION, WHICH BEING USED INCREASINGLY TO RESOLVE DISPUTES ARISING FROM GOVERNMENT CONTRACTS.

RIGHT TO INFORMATION ACT, 2005¹³⁷⁷: THIS ACT ENHANCES TRANSPARENCY BY ALLOWING CITIZENS TO ACCESS INFORMATION ABOUT GOVERNMENT CONTRACTS. IT HAS PLAYED AN IMPORTANT ROLE IN PROMOTING ACCOUNTABILITY IN PUBLIC PROCUREMENT AND CONTRACT EXECUTION.

ESSENTIAL REQUIREMENTS FOR A VALID GOVERNMENT CONTRACT

FORMAL CONDITIONS UNDER ARTICLE 299

¹³⁷⁵ General Clauses Act, No. 10 of 1897, India Code (1897)

¹³⁷⁶ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996)

¹³⁷⁷ Right to Information Act, No. 22 of 2005, India Code (2005)

¹³⁷⁴ State of Bihar v. Karam Chand Thapar & Bros. Ltd., AIR 1962 SC 110

THE REQUIREMENTS UNDER ARTICLE 299 ENSURE THAT GOVERNMENT CONTRACTS ARE EXECUTED WITH DUE AUTHORITY AND TRANSPARENCY. THESE INCLUDE:

THE CONTRACT MUST BE EXPRESSED IN THE NAME OF THE PRESIDENT OR GOVERNOR.

IT MUST BE EXECUTED BY AN AUTHORIZED OFFICER.

THESE CONDITIONS ARE OBLIGATORY, AND ANY DEVIATION MAKES THE CONTRACT VOID. FOR EXAMPLE, IN STATE OF BIHAR V. KARAM CHAND THAPAR & BROS. LTD. (1962), THE SUPREME COURT HELD THAT A CONTRACT NOT EXECUTED IN THE NAME OF THE PRESIDENT OR GOVERNOR IS INVALID.

FAIRNESS, TRANSPARENCY, AND ACCOUNTABILITY

GOVERNMENT CONTRACTS MUST ABIDE BY PRINCIPLES OF FAIRNESS, TRANSPARENCY, AND ACCOUNTABILITY. THESE PRINCIPLES ARE NECESSARY TO ENSURE THAT GOVERNMENT CONTRACTS OBLIGE TO THE PUBLIC INTEREST AND ARE NOT PREJUDICED BY CORRUPTION OR FAVOURITISM

PUBLIC INTEREST CONSIDERATION

UNLIKE PRIVATE CONTRACTS, CONTRACTS ENTERED INTO BY STATE ARE SUBJECT TO PUBLIC INTEREST CONSIDERATIONS. THIS MEANS THAT THE GOVERNMENT MUST PRIORITIZE THE WELFARE OF ITS CITIZENS OVER COMMERCIAL PROFITABILITY. FOR EXAMPLE, IN TATA CELLULAR V. UNION OF INDIA (1994), THE SUPREME COURT STRESSED THAT GOVERNMENT CONTRACTS MUST BE AWARDED THROUGH A FAIR AND TRANSPARENT PROCESS TO ENSURE PUBLIC CONFIDENCE.

CHALLENGES IN GOVERNMENT CONTRACTS AND LIABILITY ISSUES

GOVERNMENT CONTRACTS, WHICH ARE ESSENTIAL FOR PUBLIC WELFARE AND DEVELOPMENT, ARE FRAUGHT WITH CHALLENGES THAT OFTEN RESULT IN DISPUTES, INEFFICIENCIES, AND ACCOUNTABILITY ISSUES. AS NOTED BY LEGAL COMMENTATORS, THE REAL WEAKNESS OF GOVERNMENT CONTRACTING LIES IN THE LACK OF TRANSPARENCY AND ACCOUNTABILITY, WHICH FREQUENTLY LEADS TO DISPUTES AND PUBLIC

DISTRUST. THESE CHALLENGES NOT ONLY WEAKEN THE EFFICIENCY OF PUBLIC PROCUREMENT BUT ALSO RAISE CONCERNS ABOUT THE MISUSE OF PUBLIC FUNDS.

1) LACK OF TRANSPARENCY AND ARBITRARY DECISIONS

ONE OF THE MOST SIGNIFICANT CHALLENGES IN GOVERNMENT CONTRACTS IS THE LACK OF TRANSPARENCY IN TENDERING AND PROCUREMENT PROCESSES. THE ABSENCE OF CLEAR GUIDELINES AND OPEN COMPETITION OFTEN LEADS TO ARBITRARY DECISIONS, FAVOURITISM, AND CORRUPTION. FOR INSTANCE, IN RELIANCE ENERGY LTD. V. MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD. (2007), THE SUPREME COURT HIGHLIGHTED THE IMPORTANCE OF TRANSPARENCY IN PUBLIC PROCUREMENT AND EMPHASIZED THAT ARBITRARY DECISIONS IN AWARDING CONTRACTS VIOLATE THE PRINCIPLES OF FAIRNESS AND EQUALITY.

ALTHOUGH DIGITAL PLATFORMS SUCH AS THE CENTRAL PUBLIC PROCUREMENT PORTAL AND THE GOVERNMENT E-MARKETPLACE (GEM) NOW EXIST, GAPS IN IMPLEMENTATION AND COMPLIANCE CONTINUE TO CREATE OPACITY IN MANY CASES. THIS DISCOURAGES GENUINE BIDDERS AND INCREASES THE RISK OF LITIGATION. AS NOTED BY THE COMPTROLLER AND AUDITOR GENERAL (CAG) OF INDIA, NON-TRANSPARENT PROCUREMENT PROCESSES OFTEN LEAD TO INEFFICIENCIES AND LOSSES, ULTIMATELY AFFECTING PUBLIC WELFARE.

2) BUREAUCRATIC DELAYS AND INEFFICIENCIES

BUREAUCRATIC DELAYS ARE ANOTHER MAJOR CHALLENGE IN GOVERNMENT CONTRACTS. PROCEDURAL INEFFICIENCIES, SUCH AS LENGTHY APPROVAL PROCESSES AND DELAYED PAYMENTS, OFTEN HINDER THE TIMELY EXECUTION OF CONTRACTS. THESE DELAYS NOT ONLY INCREASE PROJECT COSTS BUT ALSO LEAD TO DISPUTES BETWEEN THE GOVERNMENT AND CONTRACTORS.

IN INFRASTRUCTURE PROJECTS, FOR INSTANCE, DELAYS IN LAND ACQUISITION AND ENVIRONMENTAL CLEARANCES FREQUENTLY RESULT IN COST OVERRUNS AND CONTRACTUAL DISPUTES. JUDICIAL OBSERVATIONS IN SEVERAL

CASES HAVE HIGHLIGHTED HOW SUCH BUREAUCRATIC INEFFICIENCIES CAN CAUSE BREACHES OF CONTRACT AND FINANCIAL LOSSES FOR BOTH PARTIES.

3) NON-COMPLIANCE WITH LEGAL NORMS

NON-COMPLIANCE WITH LEGAL NORMS IS A RECURRING ISSUE IN GOVERNMENT CONTRACTS. CONTRACTS THAT FAIL TO ADHERE TO THE FORMALITIES PRESCRIBED UNDER ARTICLE 299 OF THE INDIAN CONSTITUTION OR OTHER STATUTORY REQUIREMENTS ARE OFTEN INVALIDATED BY COURTS. FOR INSTANCE, IN *K.P. CHOWDHRY V. STATE OF MADHYA PRADESH (1967)*, THE SUPREME COURT HELD THAT A CONTRACT NOT EXECUTED IN THE NAME OF THE PRESIDENT OR GOVERNOR IS VOID AND UNENFORCEABLE.

NON-COMPLIANCE WITH LEGAL NORMS ALSO EXTENDS TO ISSUES LIKE IMPROPER TENDERING PROCESSES, LACK OF COMPETITIVE BIDDING, AND FAILURE TO CONSIDER PUBLIC INTEREST. SUCH LAPSES NOT ONLY RENDER CONTRACTS INVALID BUT ALSO ERODE PUBLIC TRUST IN GOVERNMENT INSTITUTIONS.

4) ENFORCEMENT ISSUES

ENFORCING CLAIMS AGAINST THE GOVERNMENT IS OFTEN A DAUNTING TASK DUE TO PROCEDURAL COMPLEXITIES AND DELAYS IN THE JUDICIAL SYSTEM. CONTRACTORS AND PRIVATE PARTIES FACE SIGNIFICANT CHALLENGES IN RECOVERING DUES OR COMPENSATION FOR BREACHES OF CONTRACT. THE ABSENCE OF A SPECIALIZED TRIBUNAL FOR GOVERNMENT CONTRACT DISPUTES FURTHER AGGRAVATES THE PROBLEM.

FOR INSTANCE, IN *STATE OF BIHAR V. MAJEED (1954)*, THE COURT EMPHASIZED THAT WHILE THE GOVERNMENT IS BOUND BY ITS CONTRACTUAL OBLIGATIONS, ENFORCING THESE OBLIGATIONS OFTEN REQUIRES LENGTHY LEGAL BATTLES. THIS CREATES A DISINCENTIVE FOR PRIVATE PARTIES TO ENGAGE IN GOVERNMENT CONTRACTS, ULTIMATELY AFFECTING PUBLIC WELFARE.

MECHANISMS FOR DISPUTE RESOLUTION IN GOVERNMENT CONTRACTS

GIVEN THE COMPLEXITIES AND CHALLENGES ASSOCIATED WITH GOVERNMENT CONTRACTS, EFFECTIVE DISPUTE RESOLUTION MECHANISMS ARE ESSENTIAL TO ENSURE ACCOUNTABILITY AND FAIRNESS. AS JUDICIAL AUTHORITIES HAVE OFTEN OBSERVED, A ROBUST DISPUTE RESOLUTION FRAMEWORK IS THE CORNERSTONE OF A TRANSPARENT AND EFFICIENT CONTRACTUAL SYSTEM.

1) JUDICIAL REMEDIES

JUDICIAL REMEDIES, SUCH AS WRIT PETITIONS AND CIVIL SUITS, ARE COMMONLY USED TO RESOLVE DISPUTES ARISING FROM GOVERNMENT CONTRACTS. WRIT PETITIONS, FILED UNDER ARTICLE 226 OF THE INDIAN CONSTITUTION, ARE PARTICULARLY EFFECTIVE IN CASES INVOLVING VIOLATIONS OF FUNDAMENTAL RIGHTS OR ARBITRARY ACTIONS BY GOVERNMENT AUTHORITIES.

FOR EXAMPLE, IN *TATA CELLULAR V. UNION OF INDIA (1994)*, THE SUPREME COURT USED ITS WRIT JURISDICTION TO QUASH AN ARBITRARY DECISION IN A GOVERNMENT TENDER PROCESS. CIVIL SUITS, ON THE OTHER HAND, ARE GENERALLY USED TO CLAIM DAMAGES OR ENFORCE CONTRACTUAL OBLIGATIONS.

2) ARBITRATION AND CONCILIATION

THE ARBITRATION AND CONCILIATION ACT, 1996 PROVIDES A FRAMEWORK FOR RESOLVING DISPUTES THROUGH ARBITRATION. ARBITRATION IS INCREASINGLY BEING USED IN GOVERNMENT CONTRACTS DUE TO ITS SPEED AND FLEXIBILITY. HOWEVER, CHALLENGES SUCH AS DELAYS IN APPOINTING ARBITRATORS AND ENFORCING AWARDS REMAIN.

THE SUPREME COURT IN CASES SUCH AS *AFCONS INFRASTRUCTURE LTD. V. CHERIAN VARKEY CONSTRUCTION CO. (P) LTD. (2010)* HAS EMPHASIZED THE VALUE OF ALTERNATIVE MECHANISMS LIKE MEDIATION, WHILE INTERNATIONAL ARBITRATION EXPERIENCES HAVE HIGHLIGHTED THE IMPORTANCE OF STRENGTHENING INDIA'S ARBITRATION

FRAMEWORK TO HANDLE COMPLEX DISPUTES MORE EFFICIENTLY.

3) TRIBUNALS AND REGULATORY BODIES

INSTITUTIONS SUCH AS THE CENTRAL VIGILANCE COMMISSION (CVC), ALONG WITH THE DEPARTMENT OF EXPENDITURE'S PROCUREMENT POLICY DIVISION, PLAY A CRUCIAL ROLE IN MONITORING GOVERNMENT CONTRACTS AND ENSURING COMPLIANCE WITH LEGAL NORMS. THESE BODIES INVESTIGATE ALLEGATIONS OF CORRUPTION, FAVOURITISM, AND NON-COMPLIANCE IN PUBLIC PROCUREMENT.

FOR EXAMPLE, THE CVC'S GUIDELINES ON TRANSPARENCY IN TENDERING PROCESSES HAVE BEEN INSTRUMENTAL IN REDUCING CORRUPTION AND IMPROVING ACCOUNTABILITY. HOWEVER, THE LACK OF BINDING ENFORCEMENT POWERS LIMITS THEIR EFFECTIVENESS.

4) ALTERNATIVE DISPUTE RESOLUTION (ADR)

ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS, SUCH AS MEDIATION AND NEGOTIATION, ARE GAINING POPULARITY AS COST-EFFECTIVE AND TIME-EFFICIENT METHODS FOR RESOLVING CONTRACTUAL DISPUTES. ADR IS PARTICULARLY USEFUL IN CASES WHERE MAINTAINING A LONG-TERM RELATIONSHIP BETWEEN THE PARTIES IS IMPORTANT.

IN *AFCONS INFRASTRUCTURE LTD. V. CHERIAN VARKEY CONSTRUCTION CO. (P) LTD.* (2010)¹³⁷⁸, THE SUPREME COURT EMPHASIZED THE BENEFITS OF MEDIATION IN RESOLVING COMPLEX DISPUTES. THE CASE HIGHLIGHTED THE NEED FOR GREATER AWARENESS AND ADOPTION OF ADR MECHANISMS IN GOVERNMENT CONTRACTS.

PROPOSED REFORMS FOR STRENGTHENING GOVERNMENT CONTRACTUAL ACCOUNTABILITY

TO ADDRESS THE CHALLENGES IN GOVERNMENT CONTRACTS AND IMPROVE ACCOUNTABILITY, SEVERAL REFORMS ARE NEEDED. AS LEGAL EXPERTS HAVE ARGUED, REFORMS IN GOVERNMENT CONTRACTING MUST FOCUS ON TRANSPARENCY,

EFFICIENCY, AND ACCOUNTABILITY TO RESTORE PUBLIC TRUST.

MANDATORY DIGITAL RECORDS FOR CONTRACT MANAGEMENT

MANDATORY DIGITAL RECORDS FOR CONTRACT MANAGEMENT CAN ENHANCE TRANSPARENCY AND ACCESSIBILITY. A CENTRALIZED DIGITAL PLATFORM FOR PUBLISHING TENDER DETAILS, CONTRACT AWARDS, AND PAYMENT RECORDS CAN REDUCE CORRUPTION AND IMPROVE ACCOUNTABILITY.

STRENGTHENING PUBLIC PROCUREMENT LAWS

A DEDICATED PROCUREMENT LAW IS NEEDED TO REGULATE GOVERNMENT CONTRACTS MORE EFFICIENTLY. SUCH A LAW SHOULD INCLUDE PROVISIONS FOR COMPETITIVE BIDDING, TRANSPARENCY, AND ACCOUNTABILITY, AS WELL AS PENALTIES FOR NON-COMPLIANCE.

INDEPENDENT REGULATORY MECHANISMS

AN INDEPENDENT BODY SHOULD BE ESTABLISHED TO MONITOR GOVERNMENT CONTRACTS AND ENSURE COMPLIANCE WITH LEGAL NORMS. THIS BODY SHOULD HAVE THE POWER TO INVESTIGATE ALLEGATIONS OF CORRUPTION AND IMPOSE PENALTIES ON ERRING OFFICIALS.

CLEAR DISPUTE RESOLUTION FRAMEWORK

A SPECIALIZED TRIBUNAL FOR GOVERNMENT CONTRACT DISPUTES CAN EXPEDITE THE RESOLUTION OF DISPUTES AND REDUCE THE BURDEN ON COURTS. THE TRIBUNAL SHOULD HAVE THE POWER TO ENFORCE ITS DECISIONS AND IMPOSE PENALTIES FOR NON-COMPLIANCE.

USE OF TECHNOLOGY AND AI IN CONTRACT MANAGEMENT

THE USE OF TECHNOLOGY AND AI IN CONTRACT MANAGEMENT CAN REDUCE HUMAN BIAS AND IMPROVE TRANSPARENCY. FOR EXAMPLE, AI-POWERED TOOLS CAN ANALYSE TENDER DOCUMENTS AND IDENTIFY POTENTIAL RISKS, ENSURING THAT CONTRACTS ARE AWARDED FAIRLY AND EFFICIENTLY.

¹³⁷⁸ *Afcons Infrastructure Ltd. v. Cherian Varkey Constructions (P) Ltd.*, (2010) 8 SCC 24

CONCLUSION

THE LEGAL FRAMEWORK GOVERNING GOVERNMENT CONTRACTS IN INDIA IS ROBUST BUT FACES CHALLENGES LIKE LACK OF TRANSPARENCY, BUREAUCRATIC DELAYS, AND NON-COMPLIANCE WITH LEGAL NORMS. JUDICIAL REMEDIES, ARBITRATION, AND ADR MECHANISMS PLAY A CRUCIAL ROLE IN RESOLVING DISPUTES, BUT REFORMS ARE NEEDED TO IMPROVE EFFICIENCY AND ACCOUNTABILITY.

REFORMS SHOULD FOCUS ON STRENGTHENING TRANSPARENCY, ACCOUNTABILITY, AND DISPUTE RESOLUTION MECHANISMS. A DEDICATED PROCUREMENT LAW, AN INDEPENDENT REGULATORY BODY, AND A SPECIALIZED TRIBUNAL ARE ESSENTIAL TO ADDRESS THE CHALLENGES IN GOVERNMENT CONTRACTS.

FURTHER RESEARCH IS NEEDED ON THE ROLE OF AI IN CONTRACT MANAGEMENT AND ON GLOBAL BEST PRACTICES. COMPARATIVE STUDIES OF GOVERNMENT CONTRACT SYSTEMS IN OTHER JURISDICTIONS CAN PROVIDE VALUABLE INSIGHTS FOR REFORMING INDIA'S LEGAL FRAMEWORK.

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