

State Accountability: Navigating Liability in Tort and Contract - An Analysis

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Abstract

The main aim of this article is to assess the state liability for tort and contract under administrative law. Before 1947, in England as well as in India, the king could not be sued for tort in his own court. State liability for tort addresses wrongful acts done by public authorities; compensate individuals for breaches of public law obligations, negligence, strict liability or statutory breach. State has many wealth and resources at its disposal, the state contracts have become very important. State liability for contract arises from the state's involvement in agreements, just like any private individuals or organization. The article discusses the challenges such as claims of immunity, balancing public interest and the court role in ensuring fairness. It also looks at new developments, like how human rights laws and global trends are shaping accountability. By exploring these issues, the article highlights the importance of holding the state responsible to promote justice and trust in government actions.

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1. INTRODUCTION

The concept of state liability is a cornerstone of modern legal system, reflecting the balance between sovereign power and individual right. When a state engage in activities that leads to harm or breach of obligations, it may be held accountable under principles of tort and contract law. In tort, liability arises from wrongful acts or omissions that cause injury or damage, often due to negligence or abuse of power. In contract, the focus shifts to the state's role as a party to agreements, ensuring that it upholds its commitments like any private individual or entity. This dual dimension of state liability embodies the principle of equality before the law and emphasizes the state's responsibility to act within the bounds of legality and fairness. By exploring the theoretical foundations and practical implications of state liability in tort and contract, this study sheds light on the evolving relationship between the government and those it serves, as well as the mechanisms available to seek redress when the state falter.

This article explores the dual dimensions of state liability in tort and contract, shedding light on their theoretical underpinnings, practical implications, and the evolving jurisprudence surrounding these concepts. By analysing judicial precedents and legislative provisions, it highlights the role of state liability in promoting justice and reinforcing the rule of law.

2. LIABILITY OF STATE-CONSTITUTIONAL TORT

In *Ramjan v. State of Rajasthan*¹, the Rajasthan High Court has held the State liable to provide free and full medical aid as also compensation to the victim for injury caused by private person, as per new horizons of constitutional tort. It has been held that the claim in public law for compensation for unconstitutional deprivation of a fundamental right is a claim based on strict liability and is in addition to private law remedy². In the instant case, four women were injured by throwing acid on them. It was held to be deprivation of the right to live with human dignity of

¹ A.I.R. 2008 (NOC) 2168 (Raj.), (Law of torts book) [Author name: Dr.R.K.Bangia]

² See *D.K. Banu v. State of W.B.*, A.I.R. 1997 S.C. 610.

victims. Scars on their face and parts of their bodies, which were caused by the acid thrown on them had resulted in their permanent disfiguration and continuous mental torture for the whole of the remaining life or loss of status, particularly the women. It was held to be a duty of the State to protect fundamental right, maintain the law and order situation, prevent the crime, the prosecution of the accused in case the crime is committed. Since it amounted to violation of the right secured by article 21 of the Constitution of India, the Rajasthan High Court held that the writ was also the proper remedy. The State, the Court said, could not be allowed to take the defense of filing of civil suit for compensation against the private person who has caused the injury.

3. STATE LIABILITY FOR TORT

The concept of state liability for tort arises when the state, or its agents, commits a wrongful act that causes harm to an individual. The distinction between sovereign and non-sovereign functions plays a crucial role in determining whether the state can be held liable.

3.1 *Understanding The Concepts of State Liability for Tort*

State liability for tort refers to the legal responsibility of the state for wrongful acts or omissions committed by its officials or agents in the course of their duties. The doctrine has evolved significantly, moving away from the absolute immunity once enjoyed by sovereigns to a more nuanced approach that balances public interest with individual rights.

3.2 *Sovereign Functions*

Sovereign functions refer to those activities that are inherently governmental and performed by the state in its sovereign capacity for the welfare and governance of its citizens. These functions are non-delegable and involve acts of legislation, defense, diplomacy, maintenance of law and order, and other core governmental responsibilities.

4. STATE LIABILITY IN SOVEREIGN FUNCTIONS

The state traditionally enjoys immunity for tortious acts committed during sovereign functions, based on the maxim “king can do no wrong.” Courts have generally held that the state cannot be sued for acts arising from its sovereign powers unless there is specific legislation permitting such liability.

Example: If harm occurs during military operations or judicial proceedings, the state may claim immunity.

4.1 *Judicial Precedents*

*Kasturi Lal v. State of Uttar Pradesh (1965)*³

Kashuri lal was a partner in Appellants Company that sold jewels in Amritsar. Then kasturi lal was arrived to meerut with gold and silver. Kasturi lal was arrived for trading purpose. At that time kasturi lal was arrested by three police. The police took gold and

silver into their custody. After that kasturi lal was released and the police handover only silver not gold. So, kasturi lal filed a lawsuit on U.P. Government seeking for recovery of his gold and its monetary worth. The Supreme Court of India held that the state was not liable for the wrongful seizure and misplacement of gold by the police, as the act was performed in the discharge of a sovereign function.

4.2 *Non-Sovereign Functions*

Non-Sovereign functions, also known as commercial or welfare functions include activities undertaken by the state that are not strictly governmental in nature. These may involve business operations, provision of public services, or activities that could also be carried out by private entities.

The following are the important Case laws to distinguish between Sovereign & Non Sovereign functions:

*P.O. Steam Navigation Co. v. Secretary of State for India*⁴, (1861)
5 Bom HCR App 1:

The servants of a dockyard were carrying iron rods and were crossing a road. When they were at the center of the road, a horse with coach rushed towards them at high speed. The servants dropped the iron rods and ran away. The horse fell down and subsequently died. The coach owner sued the Secretary of State for damages under the tort of negligence.

The Supreme Court held that the Secretary of State was liable for negligence of his servants in the same way as an ordinary employer is liable, as it was a non-sovereign function

5. STATE LIABILITY IN NON-SOVEREIGN FUNCTIONS

The state is fully liable for tortious acts committed during non-sovereign functions. The rationale is that when the state acts as an ordinary entity, it should be subject to the same laws as private individuals or corporations.

Example: If a government-run transport service causes injury due to negligence, the state can be sued for damages.

5.1 *Judicial Precedents*

*N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994)*⁵. The appellant N. Nagendra & Co., was a licensed dealer in fertilizers and foodgrains vigilance police were seized stocks under the Essential commodities Act, 1955. The District Revenue officer directed to fertilizers. The custody of to assistant agricultural officer (AAO) for distribution and food grains to the Tehsildar for disposal. The Supreme Court held that the state cannot claim immunity for tortious acts committed during non-sovereign functions. It observed that distinguishing between sovereign and non-sovereign functions must consider the evolving role of the state. *State of Rajasthan v. Vidyawati (1962)*⁶, In *State of Rajasthan v. Vidyawati (1962)*, the respondent's husband died in an accident caused by a government vehicle driven negligently by a state employee. Vidyawati, the deceased's wife, filed a suit claiming compensation. The state argued immunity under the sovereign function doctrine. The court held the state liable for

³ *Kasturi Lal v. State of U.P. (1965)*

⁴ *P.O. Steam Navigation Co. Vs. Secretary of State for India, (1861)*

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⁵ *N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994)*

⁶ *State of Rajasthan v. Vidyawati (1962)*

negligence by a government driver, as the act was non-sovereign in nature.

6. STATE LIABILITY FOR CONTRACTS: (GOVERNMENT CONTRACTS)

State liability in contracts refers to the legal responsibilities of the government when entering into agreements with private parties. In modern welfare states, the government plays a pivotal role in managing resources, developing infrastructure, and delivering public goods and services. Contracts between the government and private entities are fundamental to achieving these objectives. However, the unique position of the state requires that such agreements be governed by constitutional and statutory provisions to ensure accountability and fairness.

6.1 Meaning of Government Contracts

A government contract is an agreement entered into by the state or its authorized representatives with private parties for executing specific services, projects, or transactions. These contracts often involve large-scale procurement, public-private partnerships, and infrastructure development. Unlike private contracts, government contracts are subject to constitutional safeguards to protect public interest and maintain transparency.

6.2 Features of Government Contracts

1. Public Accountability: Government contracts aim to utilize public funds effectively, ensuring value for money.
2. Special Procedures: Such contracts are bound by rules and regulations outlined in laws like the General Financial Rules (GFR) and Public Procurement Policy.
3. Scrutiny by Courts: Government contracts can be challenged if they violate constitutional principles.

6.3 Government's Power to Carry On Trade

Article 298 of the Indian Constitution provides the government with the authority to carry out trade, business, and contracts. This article ensures that both the Union and State governments have the power to engage in commercial activities for public benefit.

6.4 Significance of Article 298

1. Broad Powers: It allows the government to undertake business ventures beyond its sovereign functions.
2. Delegated Authority: The government can authorize its officers to act on its behalf.
3. Limitations: Such powers are subject to constitutional provisions and judicial scrutiny.

Case Law: *State of Bihar v. Majeed* (1954)⁷

In the *State of Bihar v. Majeed* case, the appellant, Majeed, was accused of causing a riot under Section 147 of the Indian Penal Code (IPC). The case involved a dispute over land between Majeed and the local residents, which escalated into violent clashes. The prosecution alleged that Majeed incited the riot,

leading to public disorder and damage to property. The defence argued insufficient evidence to establish his involvement in the riot. The case centred on determining Majeed's role and responsibility in the violence.

This case clarified the extent of the state's power under Article 298. The Supreme Court held that any trade or business carried out by the government must not violate statutory or constitutional limitations.

6.5 Conditions for Government Contracts: (Article 299)

For a government contract to be valid and binding, it must comply with Article 299 of the Constitution. The article mandates specific procedural and substantive conditions to ensure legal enforceability.

6.6 Liability in Contract

Article 299 of the Constitution makes the provision of Government contracts. This Article provides: 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 authorise⁸.

Key Conditions

1. Execution by Authorized Officers: The contract must be executed by a person authorized to act on behalf of the President or Governor.
2. Written Form: Oral agreements are not recognized; the contract must be in writing.
3. Use of Official Seal: The agreement must be executed in the name of the President or Governor.

Failure to adhere to these conditions renders the contract void and unenforceable, even if both parties have acted upon it.

Case Law: *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram* (1954)⁹.

The Supreme Court ruled that a government contract that does not comply with Article 299 is not enforceable, emphasizing the importance of written and authorized agreements.

Case Law: *State of West Bengal v. B.K. Mondal & Sons* (1962)¹⁰ In *State of West Bengal v. B.K. Mondal & Sons* (1962), the case concerned a contract for the supply of goods to the State of West Bengal. The agreement was signed by an official who did not have proper authorization under the rules of the state. The question before the Supreme Court was whether such a contract was valid under Article 299 of the Indian Constitution, which mandates that all contracts made on behalf of the Government must be executed by an authorized person in writing.

This case established that even if a government contract is void due to non-compliance with Article 299, the private party may still claim compensation under principles of equity.

⁷ *State of Bihar v. majeed* (1954)

⁸ *Constitutional law of India (Text book)* [By Dr.J.N.Pandey]

6.7 Contracts and Government Contracts

While both private and government contracts are agreements enforceable by law, they differ significantly in their execution and purpose.

7. DISTINCTION BETWEEN PRIVATE AND GOVERNMENT CONTRACTS

1. Purpose: Government contracts aim to serve the public interest, whereas private contracts focus on mutual benefit.
2. Legal Requirements: Government contracts must comply with constitutional provisions, unlike private contracts.
3. Transparency: The bidding and award process for government contracts are subject to strict regulations to ensure fairness.

Case Law: K.P. Chowdhary v. State of Madhya Pradesh (1967)¹¹

In K.P. Chowdhary v. State of Madhya Pradesh (1955), the case dealt with the legality of a detention order passed under the Preventive Detention Act, 1950. The petitioner, K.P. Chowdhary, challenged his detention, arguing that the order was issued without sufficient grounds or due process. The Court examined whether the provisions of the Act were followed properly and whether the detention was justified under the Constitution. It held that preventive detention could be upheld if there was adequate justification under the law.

The Supreme Court held that government contracts are governed by both statutory and constitutional provisions, making them distinct from private contracts.

7.1 Effect of Government Contracts

When properly executed, government contracts create binding obligations on both parties. However, these contracts are subject to judicial review if challenged on grounds of illegality or unfairness.

7.2 Binding Nature

1. Legal Obligations: The government must honour its commitments under the contract.
2. Rescission: The state can terminate contracts for public interest but must provide compensation for any losses incurred.

Case Law: Union of India v. A.L. Rallia Ram (1963)¹²

The Supreme Court ruled that government contracts, once executed as per Article 299, are legally binding and enforceable, reinforcing the rule of law.

8. PRINCIPLES UNDERLYING GOVERNMENT CONTRACTS

Government contracts are guided by principles that ensure fairness, efficiency, and transparency.

KEY PRINCIPLES

1. Public Interest: The primary objective is to serve the needs of society.
2. Equity: Equal treatment of all bidders and parties involved.
3. Transparency: Open and fair procedures to prevent corruption and favouritism.
4. Accountability: Regular audits and reviews of the contract's performance.

Case Law: Tata Cellular v. Union of India (1994)¹³

This landmark case established that government decisions in awarding contracts must be fair and transparent. The Supreme Court introduced the "Wednesbury Principle" to evaluate the reasonableness of administrative actions.

9. JUDICIAL REVIEW OF GOVERNMENT CONTRACTS

Courts have the authority to review the validity and fairness of government contracts. Judicial intervention ensures that state actions align with constitutional principles.

9.1 Grounds for Judicial Review

1. Violation of Fundamental Rights: Contracts infringing on rights under Articles 14 or 19 can be struck down.
2. Arbitrariness: Decisions influenced by favouritism or bias are voidable.
3. Illegality: Contracts violating statutory provisions are unenforceable.

Case Law: Air India Ltd. v. Cochin International Airport Ltd. (2000)¹⁴

In Air India Ltd. v. Cochin International Airport Ltd. (2000), Air India challenged the demand for payment of airport charges by Cochin International Airport Ltd., arguing that the imposition of such charges was unlawful. The dispute arose when Air India refused to pay charges for the use of the airport's facilities.

The Supreme Court emphasized that while the government has the discretion to award contracts; such decisions are subject to judicial review to prevent arbitrariness.

Case Law: ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004)¹⁵

In ABL International Ltd., had secured a contract with a foreign buyer, which was backed by a bank guarantee issued by the Export Credit Guarantee Corporation of India Ltd. (ECGC). When the buyer defaulted on payment, ABL sought to invoke the bank guarantee for recovery. However, ECGC refused to honor the guarantee, claiming issues with the underlying contract terms. The case primarily focused on the dispute surrounding the enforcement of the bank guarantee and the conditions under which it could be invoked.

The Court clarified that writ petitions can be filed in contractual disputes involving the state, provided the issues pertain to constitutional or statutory violations.

¹¹ A.I.R. 1967 SC 203

¹² A.I.R. 1963 SC 1685

¹³ A.I.R. 1994 SCC (6) 651

¹⁴ Air India Ltd. v. Cochin International Airport Ltd. (2000)

¹⁵ A.I.R. 2004 Appeal (civil) 5409 of 1998

9.2 Legal Privileges in Government Contracts

The state enjoys certain privileges in contractual matters, owing to its sovereign functions and public welfare responsibilities.

9.3 Key Privileges

1. Immunity from Certain Liabilities: The state cannot be sued for acts performed as part of its sovereign functions.
2. Unilateral Termination: Contracts can be terminated in the public interest, subject to compensation.
3. Statutory Amendments: The government can modify contractual terms through legislative changes.

Case Law: R.D. Shetty v. International Airport Authority of India (1979)¹⁶

In R.D. Shetty v. International Airport Authority of India (1979), R.D. Shetty entered into an agreement with the International Airport Authority of India (IAAI) to run a restaurant at the airport. The dispute arose when IAAI terminated the contract. Shetty challenged the termination, claiming the contract was valid. The Supreme Court held that the state must act reasonably

and fairly in exercising its privileges, ensuring that public interest is prioritized.

10. CONCLUSION

State liability for torts and contracts ensures accountability and justice when public authorities cause harm or breach agreements. It balances governmental power with citizen's rights, promoting fairness and trust. By holding the state accountable for wrongful acts or contract violations. Individuals are safeguarded fostering responsibility in governance and reinforcing the rule of law essential to a just society.

Conflict of Interest

Conflict of interest declared none.

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¹⁶ A.I.R. 1979 SCC (3) 489