
THE STATE AS A COMMERCIAL ENTITY: CONSTITUTIONAL AND ADMINISTRATIVE PERSPECTIVES ON CONTRACTUAL OBLIGATIONS

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ABSTRACT

The evolution of the modern states from a sovereign authority to an active participant in commerce presents complex legal questions regarding its contractual liabilities. When the State acts as a commercial entity, it straddles two distinct identities: a public authority governed by constitutional principles of fairness, equality, and non-arbitrariness, and a contractual actor expected to operate with the efficiency and certainty of private parties. This paper explores the constitutional foundations of state contracts and examines how administrative law doctrines such as legitimate expectations, proportionality, and public accountability reshape the contours of contractual liability. It further considers whether the rigid constitutional formalities governing government contracts align with contemporary commercial realities. By adopting a doctrinal and comparative approach, the study seeks to evaluate whether India's framework sufficiently balances constitutional morality with the demands of modern commerce. The paper ultimately calls for a balanced framework that integrates public law obligations with commercial efficiency, enabling the State to uphold accountability while maintaining the flexibility necessary for effective participation in economic activities.

Keywords: Public Contracts, Doctrine of Legitimate Expectation, Promissory Estoppel, Financial Accountability, Arbitrary State Action, Dual-tiered Review Mechanism.

INTRODUCTION

Administrative law is the body of principles and rules that regulates the powers and functions of administrative authorities and ensures that the exercise of such powers conforms to constitutional values. At its core, administrative law is concerned with preventing arbitrariness, upholding the rule of law, and striking a balance between the authority of the State and the rights of individuals. In modern constitutional democracies, it provides the framework within which executive power is exercised, and simultaneously sets the standards of accountability, fairness, and transparency.

The Indian State today occupies a position very different from the classical notion of a sovereign authority. While sovereignty remains its defining features, the State has gradually evolved into a multi-dimensional actor that governs, regulates, and also participates in the economic life of the nation. This transformation has brought the State into frequent contractual relationships- with private corporations, infrastructure development, or collaborative ventures such as public-private partnerships. The State, therefore, wears two distinct hats: one as a public authority, entrusted with constitutional obligations and public accountability, and the other as a contracting body, expected to operate with efficiency and certainty in commercial dealings. This dual identity is not without complications. As a public authority, the State is bound by constitutional guarantees, particularly the principle of equality under Article 14,¹ which demands that all actions of the State, including those in the contractual sphere be fair, reasonable, and non-arbitrary. At the same time, the State is also a commercial participant, and the nature of commerce requires a degree of flexibility and freedom to negotiate, contract, and perform without being unduly constrained by constitutional formalities. The challenge lies in reconciling these two identities: can the State truly be treated like an ordinary contracting party, or does its public character necessarily impose additional obligations?

The Constitution of India lays down a framework for state contracts that reflects this tension. Article 298² confers upon the Union and the States the power to make contracts for any purpose, while Article 299³ prescribes strict formalities for their validity, including execution in the name of the President or Governor and by duly authorised persons. These safeguards are designed to ensure accountability in public contracting and to protect state resources from

¹ Constitution of India, art. 14 (1950).

² Constitution of India, art. 298 (1950).

³ Constitution of India, art. 299 (1950).

unauthorised commitments. Article 300⁴, on the other hand, addresses the liability of the Union and the States, providing that they may sue or be sued much like their foundation for states contractual liability, but they also raise questions about rigidity, enforceability, and compatibility with demands of contemporary commerce.

A striking example of the Indian State's dual character emerges in the field of infrastructure development and public procurement. Large-scale projects such as Delhi Metro Rail Corporation (DMRC) showcase the State simultaneously as a public authority and a commercial participant. On one hand, DMRC is a state-owned entity discharging a public function of providing safe and affordable transport, which makes it subject to constitutional principles of fairness and transparency. On the other hand, it routinely enters into commercial contracts with private builders, equipment suppliers, and international financiers, operating within the competitive marketplace like any private corporation. This dual role has been acknowledged in litigation: in *Delhi Airport Metro Express Pvt. Ltd v DMRC (2016)*,⁵ The Supreme Court considered disputes arising from a concession agreement, treating DMRC's obligations through the lens of both contract law and public accountability. Similarly, in the allocation of telecom spectrum (2G spectrum case), the Court underscored that while the State was acting as an economic actor allocating resources, it was also discharging a public trust duty, requiring adherence to constitutional principles of equality under Article 14. These examples illustrate that in India, the State's commercial decisions are rarely divorced from its public authority status: contractual and market participation is continually overlaid with constitutional obligations, demonstrating the inescapable fusion of administrative and commercial roles.

In the contemporary legal and economic landscape, the State increasingly engages in commercial activities, ranging from public sector undertakings and public-private partnerships to procurement and service contracts.⁶ Such participation positions the State in a dual capacity, which creates a complex legal scenario, where the rules governing private contracts intersect with constitutional and administrative law principles designed to regulate the State's actions.

⁴ Constitution of India, art. 300 (1950).

⁵ *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corp. Ltd.*, (2016) 11 S.C.C. 1 (India).

⁶ Nisha Parveen, *Transforming India's States' Exports Landscape, State-Wise Analysis*, India Business & Trade (Aug. 7, 2023), <https://www.indiabusinesstrade.in/blogs/transforming-indias-states-exports-landscape-state-wise-analysis/>

Understanding how these overlapping frameworks operate is crucial, as the outcomes of State-entered contracts often have far-reaching implications for both governance and the economy.

HISTORICAL AND THEORETICAL EVOLUTIONS

The foundational tension in contemporary state contract law originates from the historical, absolute conception of sovereignty. This classical view, rooted in English common law and inherited by India, dictated that the State, as represented by the monarch, stood above the law, a principle encapsulated in the Latin maxim, *Rex Non-Protest Peccare* (“The king can do no wrong”). This maxim was not merely a declaration of moral infallibility, but a fundamental legal doctrine asserting that the sovereign, being the source of all justice and the creator of the courts, could not be subjected to the jurisdiction of those very courts.⁷ Consequently, any promise or obligation undertaken by the Crown was viewed not as an ordinary legal contract, but as an act of executive grace, unforceable by a subject unless the sovereign granted specific permission through a cumbersome procedure known as the Petition of Right.⁸ This system ensured that the State’s political prerogative always superseded its civil or commercial obligations, establishing a legal framework where the sovereign entity was inherently immune from liability arising out of commercial deadlines.

The doctrine of sovereign immunity was transplanted onto the Indian subcontinent during the British colonial administration, initially under the East India Company (EIC) and later under the Crown. The EIC’s dual nature as both a trading corporation and a de facto political sovereign necessitated an early judicial attempt to define the limits of immunity. This was notably addressed in the seminal 1861 case of *P. & O. Steam Navigation Co. v Secretary of State for India* (1861), which drew a crucial, though often ambiguous distinction. The court held that immunity only extended to acts performed in the exercise of sovereign functions (*jure imperi*), such as defense or maintaining law and order,⁹ However, the State could be held liable for acts performed in its non-sovereign or commercial capacity (*jure gestionis*), which were analogous to actions of a private person, such as running a railway or a dockyard. This judicial carve-out marked the first significant step away from the absolute classical doctrine on Indian soil.

⁷ H. W. R. Wade & C. F. Forsyth, *Administrative Law* 37–38 (11th ed. 2014)

⁸ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* 19-20 (8th ed. 1915)

⁹ *P. & O. Steam Navigation Co. v Sec’y of State for India*, (1861) 5 Bom. H.C.R. App. 1 (India).

The limited framework of state liability was subsequently formalized through colonial legislation. The principle of suability was initially governed by Section 65 of Government of India Act, 1858¹⁰, and later, more explicitly, by provisions like Section 176 of Government of India Act, 1935¹¹. These sections codified the ability of the Crown (represented by the Governor-General-in-Council) to sue or be sued. These provisions served two key purposes: first, they affirmed the State's capacity to enter into legal relationships and participate in commerce (Article 298's precursor); second, they placed a statutory constraint on its immunity, confining it largely to the inherited common law distinction between sovereign and non-sovereign functions. Crucially, this statutory tradition, which focused primarily on suability rather than accountability, became the direct and immediate precursor to Articles 298, 299 and 300 of the Constitution of India. The new Republic thus inherited a formal legal structure for state contracts that was inherently conservative, reflecting the limited liability of a colonial sovereign rather than the expansive public accountability demanded by a modern democratic, welfare state.

The latter half of the 20th century saw the classical doctrine of sovereign immunity encounter several strains due to the emergence of the modern welfare state. As the State shed its purely regulative and defense-oriented role, it massively expanded into areas of commerce, industry and public service. This shift transformed the State into the single largest contractor, employer, and economic actor.¹² This expansion made the traditional colonial-era distinction between "sovereign" and "non-sovereign" functions- which shielded the State from liability for major activities like running a railway or an airline- increasingly untenable and anachronistic.¹³ The post-independence Indian judiciary, particularly the Supreme Court, recognised that holding a welfare state immune from its commercial or even tortious obligations would violate fundamental principle of the Rule of Law and rode publish faith. The courts therefore began actively to liberalize the concept of state liability, viewing immunity as an exception rather than the rule, paving the way for a more robust constitutional framework for government transactions.¹⁴

¹⁰ Government of India Act, 1857, s. 65.

¹¹ Government of India Act, 1935, s. 176.

¹² M. P. JAIN, Indian Constitutional Law 1551 (8th ed. 2018)

¹³ State of Rajasthan v. Vidhyawati, A.I.R. 1962 S.C. 933, 937

¹⁴ Kasturi Lal Ralia Ram Jain v. State of U.P., A.I.R. 1965 S.C. 1039

The final step in formalizing the State's role was codification of its legal position under Articles 298, 299 and 300 of the Constitution.¹⁵ This framework adopted the existing statutory regime: Article 298 legitimizes the government's role as an economic actor, granting power to conduct trade and manage property. Article 299 imposes a strict mandatory formality for all government contracts, requiring them to be expressly made in the name of the President/Governor and executed in writing by an authorised person, thereby ruling out implied contracts.¹⁶ Finally, Article 300(1) addressed suability, stating the government can be sued on the same basis as the pre-Constitution Dominion of India.¹⁷ By carrying forward this legal continuity, the Constitution preserved the historical dichotomy of limited liability, even as the judiciary began the task of reinterpreting these provisions in light of the needs of a modern welfare state.

LITERATURE REVIEW

The academic discourse on government contracts in India is defined by a fundamental normative conflict: how to subject the State's commercial power to constitutional morality. This foundational tension is reflected in the works of leading jurists. For instance, S.P. Sathee's influential thesis, which views administrative law as a control mechanism over government power, argues that once the State, recognized as a massive public corporation under Article 298, entered the contractual arena, the requirements of fairness and natural justice becomes paramount. He asserts that the State's power must be exercised *publico jure* (under public law) and not *privato jure* (under private law), establishing the conceptual basis of judicial review of contracts.¹⁸ Conversely, and providing a critical counterpoint, a strand of commercial law literature, notably articulated in early works by S.N. Jain emphasizes the practical necessity of executive efficiency and the binding overreach that could paralyze administration, thereby highlighting the need to maintain some distinction between the State's commercial function and its purely political function, even within a constitutional framework.¹⁹ This ongoing debate- balancing the administrative imperative of equality (Article 14) against the contractual barrier of formality (Article 299)-forms the essential landscape for this review.

¹⁵ V. N. Shukla, *Constitution of India* 754 (M. P. Singh ed., 13th ed. 2017).

¹⁶ *Union of India v. A. L. N. Sinha* (1971) 3 S.C.C. 844, 846

¹⁷ INDIA CONST. art. 300, cl. 1.

¹⁸ S. P. SATHE, *Administrative Law* 379–80 (7th ed. 2004)

¹⁹ S. N. JAIN, *Indian Legal History: State and Contract* 45-50 (1st ed. 1972)

Administrative Law Literature on Article 14

The administrative law literature addresses Article 14- which guarantees equality before the law and equal protection of the laws- not merely as a prohibition against legislative discrimination, but as a critical check on the executive and administrative actions of the State, particularly in contractual matters.²⁰ This expansive interpretation, which shifted Article 14's focus from mere classification to the requirement of non-arbitrariness, was largely driven by administrative law principles. A pivotal contribution of administrative law jurisprudence is the reading of Article 14 to strike down arbitrariness in state conduct. As Justice Bhagwati established in the seminal case of *E.P. Royappa v State of Tamil Nadu*, the fundamental guarantee of Article 14 is violated when executive action is "arbitrary". The literature emphasizes that equality and arbitrariness are sworn enemies; where the former reigns, the latter is excluded.²¹ This doctrine subjects all discretionary powers exercised by public authorities, including decisions to grant licenses, award tenders, or terminate contracts, to the rigorous scrutiny of rationality and fairness. If a government decision lacks a rational nexus to a legitimate state objective or is founded on caprice, it is deemed arbitrary and thus violative of the equality clause.²²

Administrative law scholars highlight that once the State enters the commercial field (as acknowledged by Article 298), it cannot claim the same wide commercial freedom as a private entity. The literature asserts that the State must act in accordance with the principles of natural justice and fairness because its action invariably impacts the public interest.²³ This mandate of fairness, rooted in the anti-arbitrariness principle of Article 14, extends to all stages of a contract:

1. Tendering and Selection: The process must be non-discriminatory, transparent, and follow pre-determined criteria.
2. Performance and Termination: The State cannot unilaterally or arbitrarily terminate a contract or impose harsh terms without procedural fairness, even if the contract

²⁰ I. P. Massey, *Administrative Law* 122 (9th ed. 2017)

²¹ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3, 30.

²² M. P. JAIN, *Indian Constitutional Law* 1162 (8th ed. 2018)

²³ S. P. SATHE, *Administrative Law* 379–80 (7th ed. 2004)

provides for such power.²⁴

In essence, administrative law integrates Article 14's guarantee into the very fabric of state contractual power, ensuring that the government's capacity to contract is exercised reasonably and fairly, making the doctrine of judicial review the primary mechanism for upholding equality in the administrative sphere.

Contract Law/Commercial Law Literature on State Contracts

The literature rooted in traditional contract and commercial law takes a distinctly functional approach, focusing primarily on the mandatory formalities, commercial necessity, and statutory liability governing government transactions, particularly through the lens of Article 299 and its interplay with the Indian Contract Act, 1872.

Commercial law scholarship treats Article 299 (1) as the paramount governing provision for state contracts, asserting its requirements-that contacts must be expressly made in the name of President/Governor and executed in writing by authorised person- as essential, mandatory and protective safeguards against unauthorised liability.²⁵ Jurists argue that strict adherence to this constitutional provision is necessary for:

1. Financial Accountability: Protecting the public exchequer from subordinate officials making hasty, undisclosed, or fraudulent financial obligations.
2. Administrative Clarity: Providing irrefutable evidence of government intent, thereby preventing litigation over ambiguous or implied contracts that would otherwise paralyze the administrative machinery.²⁶

This strict view emphasizes that the core principle of the Indian Contract Act, 1872, only applies after the initial formality of Article 299 is satisfied. If Article 299 is violated, the agreement is considered void ab initio, rendering the fundamental requirements of a valid contract (offer, acceptance, consideration) irrelevant.

²⁴ Ramana Dayaram Shetty v. Int'l Airport Auth. of India, (1979) 3 S.C.C. 489, 505

²⁵ A. G. GAI, *The Law of Government Contracts in India* 37-42 (2d ed. 2011)

²⁶ S. N. JAIN, *Indian Legal History: State and Contract* 45-50 (1st ed. 1972)

A key debate in this literature revolves around the application of equitable remedies and the specific provision of Section 70 of the Indian Contract Act, 1872 (Obligation of person enjoying benefit of non-gratuitous act). Commercial law commentators generally support the judiciary's restrictive approach to these remedies. They argue that if the strict formality of Article 299 is mandatory, allowing remedies like quantum meruit for a void contract would effectively render the constitutional protection meaningless, opening the flood for claims that the Constitution sought to prevent.²⁷ The Supreme Court case of *Chatturbhuj Withaldas v. Moreswar Parasham* (A.I.R. 1954 S.C. 236) is central here, affirming that an agreement violating the formality is void. However, subsequent jurisprudence, such as the *State of W.B. v B.K. Mondal & Sons* (A.I.R. 1962 S.C. 779) and *Mulchand v. State of M.P.* (A.I.R. 1968 S.C. 1218), which are extensively discussed in the literature, clarifies that while the contract itself is void, the State may still be held liable under Section 70 to restore the benefit it received non-gratuitously, providing a limited avenue for relief that respected both the constitutional barrier (Article 299) and the statutory principle of equity (Section 70).²⁸ Thus, the commercial perspective stresses the primacy of procedural compliance (Article 299) to safeguard public funds, while acknowledging a narrow statutory mechanism for restitution under Section 70 to prevent unjust encroachment.

Comparative Jurisprudence Review

The literature often turns to comparative jurisprudence to assess the Indian framework against global practices, revealing a universal trend toward limiting state immunity and ensuring administrative fairness in contracts.

UNITED STATES: Due process and Lochner Legacy- In the United States, judicial review of government contracts is anchored in the Due Process Clause of the Fifth and Fourteenth Amendments, which mandates that the State cannot arbitrarily deprive a person of property (including contractual rights).²⁹ Comparative scholars emphasize the “rights-privileges” distinction, where the judiciary historically treated government contracts as mere privileges, offering limited protection. However, modern jurisprudence has substantially eroded this view, demanding procedural due process (i.e. notice and hearing) before the government can

²⁷ *Union of India v. A. L. N. Sinha* (1971) 3 S.C.C. 844

²⁸ *Mulchand v. State of M.P.*, A.I.R. 1968 S.C. 1218, 1222

²⁹ *Lochner v. New York*, 198 U.S. 45 (1905)

terminate a contract or benefit.³⁰ This development closely parallels the Indian Supreme Court's use of Article 14's non-arbitrariness doctrine to inject procedural fairness into contractual disputes, demonstrating a shared constitutional commitment to controlling executive discretion over vested economic interests.

UNITED KINGDOM: Public law/ Private Law divide- The U.K. experience highlights the challenge of the public law/private law distinction. English administrative law, influenced by the doctrine of ultra vires and the concept of "abuse of power" permits judicial review of the process by which a public body reaches a contractual decision (e.g. procurement).³¹ However, unlike India, the U.K. courts generally remain reluctant to intervene in the substance of the contract or to apply public law remedies (like mandamus) to enforce purely private contractual rights once the contract is formed.³² Scholars contrast this approach with the Indian judiciary's more activist stance, where the constitutional remedy under Article 32 or 226 is readily invoked against the State, blurring the lines between private breach and public law violation. This comparison underscored the uniquely expansive role of Article 14 in subsuming private contractual issues into the public law domain in India.

FRANCE: *Droit Administratif* and Special Regimes- French administrative law, or *Droit Administratif*, offers a robust comparative model where government contracts are presumptively governed by a specialised public law regime enforced by the Council d'État.³³ The literature notes that French law explicitly acknowledges the State's superior interest (the *puissance publique*), allowing the administration unilateral powers (such as modification or termination in the public interest) that are generally unavailable to private parties. However, this power is balanced by the administration's obligation of financial equilibrium, meaning the contractor must be fully indemnified for any resulting loss.³⁴ This regime provides a structurally clear mechanism for balancing public interest against private rights, a clarity that Indian jurisprudence often attempts to achieve ad-hoc through the application of Article 14 and the equity of Section 70 of the Contract Act.

³⁰ Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

³¹ H. W. R. Wade & C. F. Forsyth, Administrative Law 633–34 (11th ed. 2014)

³² R v. Governors of the London Docklands Development Corp. ex parte Frost, [2000] 1 W.L.R. 297, 305 (Eng.)

³³ JOHN BELL ET AL., French Administrative Law 125 (2d ed. 2013).

³⁴ *Id.* at 26

The Research Gap and Problem Statement

The literature review reveals a significant jurisprudential conflict in Indian government contract law, stemming from the clash between two fundamental constitutional duties. On one hand, the Administrative law doctrine of non-arbitrariness (Article 14) mandates of Article 299 dictates that any contract lacking strict written formality is void ab initio, a rule intended to protect public finance. This creates a critical gap: while the judiciary can condemn the State's conduct as constitutionally unfair, its ability to grant a complete remedy is severely restricted by the formal invalidity of the contract. The reliance of Section 70 of the Indian Contract Act, 1872, only offers partial, restitutionary relief, failing to address the constitutional violation.

The central problem addressed by this research is the lack of a coherent and predictable doctrinal framework for enforcing State liability and granting suitable remedies when a government contract is void due to non-compliance with Article 299, but the State's action related to it is arbitrary and violated Article 14. The research seeks to resolve this ambiguity by proposing a systematic judicial approach that integrates constitutional fairness with procedural accountability, ensuring the Rule of Law is upheld without nullifying mandatory formalities.

THE FRAGMENTATION OF REMEDIES AND JUDICIAL INNOVATION

This section moves from the theoretical tension between Article 14 and Article 299 to the practical consequences in the courtroom, analysing the fragmented and inconsistent remedial landscape developed by the Indian judiciary. The focus here is to demonstrate the inadequacy of current statutory and equitable solutions in providing a complete public law remedy for arbitrary action related to formally void contracts, thereby validating the need for a new doctrinal framework.

The primary statutory mechanism developed by the courts to circumvent the strictures of Articles 299 is Section 70 of the Indian Contract Act, 1972 (Obligation of person enjoying benefit of non-gratuitous act).³⁵ Judicial application of Section 70, established in the landmark decision of *State of W.B. v. B.K. Mondal & Sons*, limits the claimant's relief exclusively to restitution- compensation for the actual benefit received by the State.³⁶ This mechanism is functionally a compromise doctrine: it respects the constitutional barrier of Article 299 by

³⁵ Indian Contract Act, 1872, s. 70.

³⁶ *State of W.B. v. B. K. Mondal & Sons*, A.I.R. 1962 S.C. 779, 785

denying contractual damages (e.g. loss of profit) while enforcing a form of minimal fairness by preventing unjust enrichment.³⁷ However, its scope is inherently limited, as it is a private law remedy focused solely on the pecuniary benefit conferred, and is entirely silent on the core public law violation: the injury of arbitrariness under Article 14. Section 70's inability to provide non-pecuniary compensation for procedural unfairness or reliance loss highlights the fragmentation of relief.

A significant judicial innovation has been the expansion of writ jurisdiction (Article 226/32) to address contractual matters, which directly challenges the traditional notion that breach of contract belongs exclusively to civil courts. The pivotal decision in *ABL International Ltd. v. Export Credit Guarantee Corp. of India Ltd.* solidified the principle arising out of contracts, provided the State's action is arbitrary, discriminatory or violates Article 14.³⁸ The extension of public law jurisdiction has effectively created two parallel tracks for relief:

1. Civil Suit: For breach of contract claims requiring factual evidence and contractual damages.
2. Writ Petition: For claims based purely on the abuse of power and the violation of Article 14, seeking non-monetary remedies like Certiorari (to quash an arbitrary decision) or Mandamus (to compel fair procedure).

This dual jurisdiction, while granting access to constitutional remedies, often results in inconsistent outcomes. A court may quash an arbitrary termination via writ (upholding Article 14), but the contractor still cannot enforce "void" contract in a civil court (upholding Article 299), illustrating the failure of the judiciary to offer a single, unified remedy. This dual reliance on administrative law principles like Promissory Estoppel and Legitimate Expectation further demonstrates remedial inconsistencies. While the doctrine of Promissory Estoppel, notably affirmed in *Motilal Padampat Sugar Mills Co. v. State of U.P.*, allows a claimant to prevent the government from reneging on a clear promise where the claimant has suffered a detriment in reliance, its application is significantly qualified.³⁹ The Supreme Court affirmed in cases like *Jit Ram Shiv Kumar v. State of Haryana* that Estoppel cannot be invoked to compel the State to contravene a statute or a mandatory constitutional provision like Article 299.⁴⁰ Similarly, the

³⁷ *Mulchand v. State of M.P.*, A.I.R. 1968 S.C. 1218, 1222

³⁸ *ABL Int'l Ltd. v. Export Credit Guarantee Corp. of India Ltd.*, (2004) 3 S.C.C. 551, 575

³⁹ *Motilal Padampat Sugar Mills Co. v. State of U.P.*, (1979) 2 S.C.C. 409, 440

⁴⁰ *Jit Ram Shiv Kumar v. State of Haryana*, (1981) 1 S.C.C. 11, 33

principle of Legitimate Expectation only guarantees a fair procedure or a rational justification for the State's departure from a promise; it does not guarantee the substantive relief of having the promise fulfilled. These doctrines operate purely to address the reliance loss or procedural inquiry, but they are powerless to cure the constitutional voidness imposed by Article 299, demonstrating that the current system is a patch-work of statutory and equitable compromises that fail to establish a principled public law basis for full State accountability.

COHERENT DOCTRINAL FRAMEWORK

This section transitions from diagnosing the problem (conflict between Article 299 voidness and Article 14 arbitrariness, and the failure of existing remedies) to offering a systematic judicial solution. It outlines and justifies a proposed framework for judicial review and remedy in cases where an agreement with the State is formally void but the State's conduct is unconstitutional.

The core inadequacy of the current remedial scheme (Section 70, Estoppel) is its failure to provide a remedy commensurate with the nature of the wrong. When the State acts arbitrarily, it commits a public law wrong- a violation of the constitutional duty under Article 14- not merely a private commercial injury.⁴¹ Restitution (s. 70) only addresses the State's unjust enrichment; it does not compensate for the contractor's reliance loss or injury to dignity and reputation caused by procedural unfairness (e.g. blacklisting without a hearing).⁴² Upholding the Rule of Law requires that the State, as a constitutional entity, be held fully accountable for its constitutional failures. Therefore, the framework must shift the remedial focus from the void contract to the arbitrary administrative conduct, thereby warranting a public law remedy.

To resolve the tension without nullifying Article 299, this research proposes a Dual-Tiered Review Mechanism for judicial intervention in cases of void government agreements:

Tier 1: Formal Review (Article 299 Maintenance)- The court confirms the mandatory nature of Article 299. The agreement, due to non-compliance, remains void ab initio. This confirmation is crucial as it:

- a) Upholds Public Accountability: It preserves the protective function of Article 299,

⁴¹ Shrilekha Vidyarthi v. State of U.P., (1991) 1 S.C.C. 212, 236

⁴² Erusian Equipment & Chems. Ltd. v. State of W.B., (1975) 1 S.C.C. 70, 75

ensuring public funds are not committed through unauthorised actions.

- b) Denies Contractual Relief: It confirms that the claimant is not entitled to contractual damages (e.g. expectation damages or lost profits).

Tier 2: Conduct Review and Public Law Action (Article 14 activation)- The courts then proceed to a distinct review of the executive's conduct in relation to the transactions, treating the arbitrary acts as a separate, actionable public law violation or a constitutional tort. This tier activates judicial review principles:

- a) Test of Arbitrariness: The court assesses the State's action (e.g. refusal to execute the final contract, arbitrary termination of the work already underway) against the criteria of reasonableness and fairness under Article 14.
- b) Basis of Relief: If the State's conduct is found arbitrary, the relief is granted not for the breach of the void agreement, but for the infringement of the constitutional right to non-arbitrary treatment.

The most critical component of this framework is the expansion of permissible public law remedies beyond mere restitution. The courts should adopt the principle of granting Compensatory Public Law Damages that cover the claimant's actual loss resulting from the State's arbitrary action.

TYPE OF COMPENSATION	DESCRIPTION	JUSTIFICATION
Restitution	Compensation for the benefit received by the State (as per section 70)	Minimum salary requirement; prevents unjust enrichment
Reliance Damages	Compensation for expenditure incurred by the claimant in reasonable reliance on the State's promise (e.g. procurement of materials, initial setup costs)	Enforces the duty arising from Promissory Estoppel but grants it as a direct remedy for the Article 14 violation, not merely as an equitable defence.
Constitutional/ Consequential	Compensation for non-	Upholds the dignity and rights

Damages	pecuniary losses directly flowing from the arbitrary act, such as injury to reputation, mental agony, or losses sustained while the claimant was unlawfully barred (e.g. during an arbitrary blacklist period)	of the contractor as a citizen; addresses the public ;an injury that current law ignores. This aligns with jurisprudence of constitutional torts (e.g. illegal detention). ⁴³
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The grant of these expanded remedies ensures that the State is fully accountable for the consequences of its constitutional failure, while simultaneously protecting public accountability by denying the contractor the benefit of the void bargain (i.e. profits)

Applying framework to the facts of *State of W.B. v B.K. Mondal & Sons* illustrates its superiority. Under the current law, the contractor only received restitution for the cost of the work done (s. 70). The proposed framework:

- **Tier 1:** The contract for construction remains formally void (s. 299)
- **Tier 2:** The State's subsequent refusal to pay after benefiting from the construction is confirmed as a violation of Article 14 (arbitrariness and unjust treatment).
- **Remedy:** The claimant would receive not only the restitution amount (s. 70) but also reliance damages (if any expenditure was incurred beyond the work paid for) and potentially a limited form of constitutional damages for the prolonged arbitrary refusal to compensate, thereby achieving a more complete and just resolution without enforcing the non-complaint agreement.

CONCLUSION

This research has established that Indian government contract law operates under a deep, unresolved constitutional dichotomy between the mandatory formality of Article 299 (protecting the public exchequer by rendering non-complaint agreements void ab initio) and the imperative of Article 14 (requiring non-arbitrary state conduct). The failure of current remedial landscape, characterized by the limitations of s. 70 restitution and inconsistent

⁴³ Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746

application of writ jurisdiction, lies in its inability to adequately address the public law inquiry caused by arbitrary State action while simultaneously respecting the constitutional voidness imposed by formality. To overcome this, the paper proposes a Dual-Tiered Review Mechanism that effectively resolves the research problem: the courts must respect Article 299 by denying contractual expectation damages (Tier 1), but activate a full public law review under Article 14 (Tier 2) to award Compensatory Public Law Damages. This solution ensures that the State is fully accountable for constitutional failures, covering not just the benefit received, but also the contractor's detrimental reliance and non-pecuniary injury, aligning India's administrative jurisprudence with global standards of fairness and accountability.

To implement the principles framework, two key recommendations are necessary. First, the Supreme Court of India should issue comprehensive guidelines clarifying the scope of Article 226/32 in contractual matters, explicitly distinguishing between a purely private law "breach of contract" and a public law "arbitrary action in contract". These guidelines must affirm that the remedy for Article 14 violation must include Reliance Damages and, in cases of severe procedural abuse (like arbitrary blacklisting), Constitutional damages should amend their Rule of Business to incorporate robust procedural safeguards for contractors. These rules should mandate an internal, quasi-judicial mechanism for the quick determination of reliance costs and procedural fairness claims before any final termination or blacklisting action is taken, thereby integrating the constitutional duty of fairness directly into the administrative process and reducing the incidence of arbitrary action that necessitates court intervention.