



Rights and Liabilities of the Government

Articles 294 to 300 in Part XII of the Constitution deal with the property, contracts, rights, liabilities, obligations and suits of the Union and the states. In this regard, the Constitution makes the Union or the states as juristic (legal) persons.

PROPERTY OF THE UNION AND THE STATES

1. Succession

All property and assets that were vested in the Dominion of India or a province or an Indian princely state, before the commencement of the present Constitution, became vested in the Union or the corresponding state.

Similarly, all rights, liabilities and obligations of the government of the dominion of India or a province or an Indian state would now be the rights, liabilities and obligations of the Government of India or the corresponding state.

2. Escheat, Lapse and *Bona Vacantia*

Any property in India that would have accrued to King of England or ruler of Indian state (princely) by escheat (death of a person inte-state without any heir), lapse (termination of rights through disuse or failure to follow

appropriate procedures) or *bona vacantia* (property found without any owner) for want of a rightful owner, would now vest in the state if the property is situated there, and in the Union, in any other case. In all these three cases, the property accrues to the government as there is no rightful owner (claimant).

3. Sea-Wealth

All lands, minerals and other things of value under the waters of the ocean within the territorial waters of India, the continental shelf of India and the exclusive economic zone of India vests in the Union. Hence, a state near the ocean cannot claim jurisdiction over these things.

India's territorial waters extend to a distance of 12 nautical miles from the appropriate base line. Similarly, India's exclusive economic zone extends upto 200 nautical miles¹.

4. Compulsory Acquisition by Law

The Parliament as well as the state legislatures are empowered to make laws for the compulsory acquisition and requisitioning of private property by the governments. Further, the 44th Amendment Act (1978) has also abolished the constitutional obligation to pay compensation in this regard except in two cases: (a) when the government acquires the property of a minority educational institution; and (b) when the government acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits².

5. Acquisition under Executive Power

The Union or a state can acquire, hold and dispose property under the exercise of its executive power.

Further, the executive power of the Union or a state extends to the carrying on any trade or business within and in other states also.

SUITS BY OR AGAINST THE GOVERNMENT

Article 300 of the Constitution deals with the suits by or against the

Government in India. It lays down that the Government of India may sue or be sued by the name of the Union of India and government of a state may sue or be sued by the name of that state, eg, State of Andhra Pradesh or State of Uttar Pradesh and so on. Thus, the Union of India and states are legal entities (juristic personalities) for purposes of suits and proceedings, not the Government of the Union or government of states.

Regarding the extent of the governmental liability, the Constitution (Article 300) declares that the Union of India or states can sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding provinces or Indian states might have sued or been sued before the Constitution. This provision is subject to any law made by Parliament or a state legislature. But, no such law has been enacted so far. Hence, at present, the position in this respect remains the same as it existed before the Constitution. In the pre-Constitution period (i.e., from the days of the East India Company up to the commencement of the Constitution in 1950), the government was suable for contracts but not for torts (wrongs committed by its servants) in respect of its sovereign functions. This is explained in detail as follows:

1. Liability for Contracts

Under the exercise of its executive power, the Union or a state can enter into contracts for the acquisition, holding and disposal of property, or to carry on any trade or business, or for any other purpose. But, the Constitution lays down three conditions which must be fulfilled by such contracts:

- (a) They must be expressed to be made by the president or governor, as the case may be;
- (b) They must be executed on behalf of the president or governor, as the case may be; and
- (c) They must be executed by such person or in such manner as the president or governor may direct or authorise.

These conditions are mandatory and not merely directory in nature. Failure to comply with them nullifies the contracts and renders them void and unenforceable in the courts.

Further, the president or the governor is not personally liable in respect of

any contract executed in his name. Similarly, the officer executing the contract is also not personally liable. This immunity is purely personal and does not immunize the government from a contractual liability, making the government suable in contracts. This means that the contractual liability of the Union government and the state governments is the same as that of an individual under the ordinary law of contract, which has been the position in India since the days of the East India Company.

2. Liability for Torts

In the beginning, the East India Company was only a trading body. Gradually, it acquired territories in India and became a sovereign authority. The Company was suable for its functions as a trader but not as a sovereign. This immunity of the Company in respect of its sovereign functions was based on the English Common Law maxim that the 'King can do no wrong', which means that the King was not liable for wrongs of his servants. This traditional immunity of the State (i.e., Crown) in Britain from any legal liability for any action has been done away by the Crown Proceedings Act (1947). However, the position in India still remains the same.

Therefore, the government (Union or states) in India can be sued for torts (civil wrongs) committed by its officials only in the exercise of its non-sovereign functions but not in the sovereign functions like administering justice, constructing a military road, commanding goods during war, etc. This distinction between the sovereign and non-sovereign functions of the Government in India and the immunity of the government in respect of its sovereign functions was established in the famous *P and O Steam Navigation Company* case³ (1861). This was reaffirmed by the Supreme Court in the post-independence era in the *Kasturilal* case⁴ (1965). However, after this case, the Supreme Court started giving a restrictive interpretation to sovereign functions of the government and awarded compensation to victims in a large number of cases.

In Nagendra Rao Case^{4a} (1994), the Supreme Court criticised the doctrine of sovereign immunity of the State and adopted a liberal approach with respect to the tortious liability of the State. It ruled that when a citizen suffers any damage due to the negligent act of the servants of the State, the State

would be liable to pay compensation for it and the State cannot avoid this liability on the ground of sovereign immunity. It held that in the modern sense, the distinction between sovereign and non-sovereign functions does not exist. It laid down the proposition that barring a few functions, the State cannot claim any immunity. Its observations, in this case, are as follows:

1. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy.
2. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any water-tight compartmentalisation of the functions of the State as “sovereign” and “non-sovereign” or “governmental” and “non-governmental” is not sound. It is contrary to modern jurisprudential thinking.
3. The need of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. In a welfare State, the functions of the State are not only the defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of the people in almost every sphere—educational, commercial, social, economic, political and even marital.
4. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc., which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

In the above case, the Supreme Court did not overrule its judgement in the *Kasturilal* case (1965). However, it said that it is applicable to rare and limited cases.

In *Common Cause Case*^{4b} (1999), the Supreme Court again examined the whole doctrine and rejected the sovereign immunity rule. The Court held that

the rule of State liability as laid down in P. & O. Steam Navigation Company case is very outmoded. It said that in modern times when the State activities have been considerably increased it is very difficult to draw a line between its sovereign and non-sovereign functions. The increased activities of the State have made a deep impression on all facets of citizens' life, and therefore, the liability of the State must be made co-extensive with the modern concept of a welfare State. The State must be liable for all tortuous acts of its employees, whether done in exercise of sovereign or non-sovereign powers^{4c}. Finally, the court observed that the efficacy of Kasturilal case as a binding precedent has been eroded.

In the Prisoner's Murder case^{4d} (2000), the Supreme Court ruled that in the process of judicial advancement Kasturilal case has paled into insignificance and is no longer of any binding value.

SUITS AGAINST PUBLIC OFFICIALS

1. President and Governor

The Constitution confers certain immunities to the president of India and governor of states with regard to their official acts and personal acts. These are:

(a) Official Acts The president and the governors cannot be sued during the term of their office or thereafter, for any act done by them in the exercise and performance of their official powers and duties. However, the official conduct of the president can be reviewed by a court, tribunal or any other body authorised by either House of Parliament to investigate charges for impeachment. Further, the aggrieved person can bring appropriate proceedings against the Union of India instead of the president and the state instead of the Governor of that state.

(b) Personal Acts No criminal proceedings can be started against the president and the governors in respect of their personal acts nor can they be arrested or imprisoned. This immunity is limited to the period of the term of their office only and does not extend beyond that. However, civil proceedings

can be started against them during their term of office in respect of their personal acts after giving two months' advance notice.

2. Ministers

The Constitution does not grant any immunity to the ministers for their official acts. But, since they are not required to countersign (as in Britain) the official acts of the president and the governors, they are not liable in the courts for those acts⁵. Moreover, they are not liable for the official acts done by the president and the governors on their advice as the courts are debarred from inquiring into such advice. However, the ministers do not enjoy any immunity for their personal acts, and can be sued for crimes as well as torts in the ordinary courts like common citizens.

3. Judicial Officers

The judicial officers enjoy immunity from any liability in respect of their official acts and hence, cannot be sued. The Judicial Officers Protection Act (1850) lays down that, 'no judge, magistrate, justice of peace, collector or other person acting judicially shall be liable to be sued in any civil court for any act done by him in the discharge of his official duty'.

4. Civil Servants

Under the Constitution, the civil servants are conferred personal immunity from legal liability for official contracts. This means that the civil servant who made a contract in his official capacity is not personally liable in respect of that contract but it is the government (Central or state) that is liable for the contract. But, if the contract is made without complying the conditions specified in the Constitution, then the civil servant who made the contract is personally liable. Further, the civil servants also enjoy immunity from legal liability for their tortious acts in respect of the sovereign functions of the government. In other cases, the liability of the civil servants for torts or illegal acts is the same as of any ordinary citizen. Civil proceedings can be instituted against them for anything done in their official capacity after giving a two months' advance notice. But, no such notice is required when the

action is to be brought against them for the acts done outside the scope of their official duties. Criminal proceedings can be instituted against them for acts done in their official capacity, with the prior permission of the president or the governor, where necessary⁶.

Table 64.1 *Articles Related to Rights and Liabilities of the Government at a Glance*

<i>Article No.</i>	<i>Subject-matter</i>
294.	Succession to property, assets, rights, liabilities and obligations in certain cases
295.	Succession to property, assets, rights, liabilities and obligations in other cases
296.	Property accruing by escheat or lapse or as <i>bona vacantia</i>
297.	Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union
298.	Power to carry on trade, etc.
299.	Contracts
300.	Suits and proceedings
361.	Protection (immunities) of President and Governors

NOTES AND REFERENCES

1. Under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, passed by the Parliament after the 40th Constitutional Amendment Act, 1976.
2. The first provision was added by the 44th Amendment Act (1978). This amendment abolished the Fundamental Right to property and made it a legal right. The second provision was added by the 17th Amendment Act (1964).
3. *Peninsular and Oriental Steam Navigation Company v. Secretary of State*

for India, (1861).

4. *Kasturilal v. State of UP*, (1965).

4a. *N. Nagendra Rao & Co. v. State of Andhra Pradesh* (1994).

4b. *Common Cause, Registered Society v. Union of India* (1999).

4c. J.N. Pandey, *The Constitutional Law of India*, 49th Edition, Central Law Agency, p.682.

4d. *State of A.P. v. Challa Ramkrishna Reddy* (2000).

5. In Britain, the ministers are required to countersign the official acts of the crown and are held liable in the courts for those acts.

6. Criminal Procedure Code says—where a public servant who is not removable from his office save by or with the sanction of the Central or state government is accused of an offence, committed by him while acting or purporting to act in the discharge of his official duty, no court can take cognizance of such offence without the previous sanction of the Central government or the state government, as the case may be.