CHAPTER-VII
CONCLUSIONS AND SUGGESTIONS

Contract is basically a matter of private law, however the law relating to the Government contracts in the modern times becoming distinct from to the private Contract. In this area there is a need to protect public interest and also to protect individuals against unfair exercise of administrative power. It is axiomatic that the government or any of its agencies ought not to be allowed to act arbitrarily and confer benefits on whomsoever they want. Therefore there is a necessity to develop some norms to regulate and protect individual interest in such wealth and thus structure and discipline the government discretion to confer such benefits. Many a time, the standard forms of contract are used in which the individuals have no choice but to sign on the dotted line and the terms and conditions of the so-called ‘Contract’ are dictated by the monopolistic state authority concerned and the individuals has very little say in the matter. The whole jurisprudence of Government Contract is governed by Article 299 of the Constitution of India. In India we can say that law regarding to the Government Contract is still in the evolution phase. While in French Jurisprudence, a distinct branch of law contract administratifs, has arisen to take care of the distinctive features of government contracts. In U.S.A the law relating to Government contract is also quite sophisticated. In order to protect the public and individual interest and to ensure impartiality, fairness and non-arbitrariness in Government contract there is a need to pass a new law which will provide norms and regulations to protect public and individual interest in Government Contracts.

The doctrine of promissory estoppel is a doctrine of equitable adjustment. It is in place to ensure that no party to an agreement suffers any detriment while attempting to perform the act that would serve as consideration for a unilateral promise by another party. However, this doctrine can only be applied when certain
conditions are fulfilled. Firstly, the party seeking to impose the estoppel must have altered his position. Secondly, the other party must not have given reasonable notice or reasonable opportunity to the party to resume his position. Finally, the party must be unable to resume his original position. If the above three conditions are fulfilled, then the doctrine of promissory estoppel is applicable.

The doctrine of promissory estoppel is necessary to place checks on the arbitrary powers of the State and this doctrine is one that would certainly serve that purpose by protecting the freedom to contract of citizens. In recent times, there is emphasis on government promises, especially in the realm of contract law and business transactions. It follows that an ordinary citizen who invests his assets based on the government’s promise only to find that the government does not abide by its promise must be afforded protection.

It is thus unfortunate to note that the judicial pronouncements in India, post Motilal Padampat Sugar Mills vs Uttar Pradesh\(^1\) have neither been uniform nor consistent. Where there have been certain instances when the doctrine of promissory estoppel has been used to bind the government to its representation, there have also been certain similar instances when it has not. In recent times, the trend has been not to apply the doctrine and allow the use of the doctrine of executive necessity as an effective defence. However, the author is of the opinion that it is not equitable to do so as it has a retrospective effect even if it is in the exercise of the government’s statutory powers.

While the contribution and role of the Supreme Court in the development of the doctrine of promissory estoppel has been significant, there is surely a sign of discontent with the restrictive view and limited application of the doctrine. The powers and limitations given to the government have a social function to perform,

\(^1\) 1979 SCR (2) 641
namely for the benefit of its people. The transformation in the attitude of the Apex Court is not an agreeable one as it tilts the balance in favour of one against the other, with the government emerging victorious against the ordinary citizen.

The judicial perspectives that have been rendered in various cases are very clear and various doctrines propounded by the higher judiciary have helped sustainability of judicial decisions. The fact that estoppel will not be applied in government contracts and the correct interpretation of Article 299 of the Indian constitution have been rendered by various judgements. The issues regarding ratification of contracts and procedural issues have also been analysed critically. The balance of convenience for evaluating the contracts entered by private parties and government have been analysed and the courts have agreed in principle that the judicial consideration and treatment should be same to a greater extent. The courts have also exceptionally felt that the contractual doctrines pertaining to proportionality, legitimate expectation have been embedded in many precedents and continuing such principles for government contracts was the need of the hour. The judicial restraints for public policy issues have been elaborately dealt and the way to approach and strike a balance between government contractual obligation and public policy is a unique feature of Indian judiciary.

The international perspective regarding government contracts is dynamic and developing day by day. In recent years we could see lot of developments in legislative and judicial perspectives in government contracts. It is high time to enact a specific and comprehensive law for the purpose of regulating public procurement, government contract so as to avoid ambiguity. It is highly appreciable that the Government of India has framed guidelines for the purpose of e-auctioning under the relevant legislations. The government of India should be a part of WTO GPA and UNCITRAL model law on procurements as early as possible. The contractual liability of the
governments in international spheres is also changing due to LPG era but at the same
time it is mindful to agree that the developments in international sphere in these areas
are consistent.

State contract is when a state owned entities like organizations and various
corporations, which have separate legal identity of their own enter into foreign
nationals and other foreign entities, for varied utilities like hydro-electric power,
natural gas, for construction, technical know-how etc. Generally when a state owned
agency breaches a contract, the responsibility of the contract is attributed to the state,
and therefore arises the concept of state responsibility for contractual relations.
Generally such disputes especially for contracts wherein there is foreign investment is
involved would be adjudicated by ICSID i.e. International Centre for Settlement of
Investment Disputes, and this would be forum wherein the aggrieved party can expect
impartiality and independence instead of approaching the breaching party’s country
courts.

7.0 The Government Contract is meant for the Welfare of a State

My research work is confined within the amplitude of “Contractual
Obligations” and it has to be moved on the line drawn under the Constitution of
India. Normally no contract will form between the parties without obligations
which are stated to be discharged for the fulfilment of the conditions of an
agreement.

Just like parties to the Contract Article 298 of the Constitution of India confer
power on the Union as well as on each State for making of contracts for any
purpose. The executive power of the union and of each state shall extend, subject
to any law made by the appropriate legislature, to the grant, sale deposition or
mortgage of any property held for the purposes of the Union or of such state as
the case may be and to the purchase or acquisition of property for those purposes respectively and to the making of contracts.

The executive power conferred under Article 298 on the Union as well as on each State to carry on of any trade, or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose shall be exercised in a fair and reasonable way, treating the other party to the contract or trade whatever the case may be, equally without any discrimination as enshrined under Article 14 of the Constitution of India.

Since the function, as afore stated, are expressly declared as included in the “executive power” no legislative sanction is necessary for the carrying on of such function.

Article 298 does not open with words “subject to the provision of the Constitution” as contemplated under Article 73 of the Constitution. On a reading of Article 73 and Article 298 with harmonious blend, it is clear that the executive power of the State in the matter of carrying on any trade or business with respect to which the State legislature may not make laws is subject to legislation by Parliament but is not subject to the executive power of the Union.

The executive power for making contract for any purpose must be exercised fairly for the benefit or for the welfare of public at large. It shall not be abused either to exploit an individual contractor or to the detrimental to the economical resource of Nation.

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7.1 There is Constitutional line between the State as Government and the State as Trader

If a State chooses to go into the business of buying and selling commodities: its right to do so may be conceded so far as the Constitution is concerned, but the exercise of the right is not the performance of a governmental function. When the State enters the marketplace seeking customers it divests itself of its quasi-sovereignty protanto, and takes on the character of a trader. There is constitutional line between the State as Government and the State as trader. Chief Justice Marshall said long ago in Bank of U.S. vs. Panaters Bank:

“It is we think second principle, that when Government becomes a partner in any trading company, it devests itself, so far as concern the transactions of that company, of its sovereign character and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates and to the business which is to be transacted.”

7.2 Trade with Government – Subject to Part III

The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination.

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4 Ohio vs. Helvering, 79 L ed 1307 (1310)
5 6 Led 244
The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling\(^7\).

It is true that the Government may enter into a contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. The rule of reason and the rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by the State instrumentality in dealing with the citizens in entering or not entering into contracts. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in such type of transactions. The freedom of the Government to enter into business with anybody is also subject to public interest. But the State has a wide range of permissible policy options and the Court will not decide which one is better.

**7.3 Conditions of Contractual Agreement to be adhered scrupulously**

There is no gainsaying that as a general rule, tender conditions have to be adhered to scrupulously, for otherwise, as observed by the Supreme Court in *West Bengal Electricity Board vs Patel Engineering Co. Ltd.*,\(^8\) any relaxation or waiver of a tender condition, unless so provided in the notice inviting tender, would encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law and our Constitutional values. But a distinction

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\(^7\) Supra note 6

has to be drawn between an essential condition and an ancillary condition. It needs little emphasis that an essential condition has to be enforced punctiliously and rigidly but an ancillary condition can be waived depending on the facts and circumstances of a given case.

A similar issue came up for consideration of the Apex Court in *Poddar Steel Corporation vs Ganesh Engineering Works*⁹. In that case, one of the tender conditions required that tender was to be accompanied by earnest money to be deposited either in the form of cash or by a demand draft drawn on the State Bank of India. The defaulting partly, instead of sending a demand draft drawn on the State Bank of India, sent a bankers’cheque issued by the Union Bank of India. The question that arose for consideration of the Supreme Court was whether in view of the said deficiency in the matter of deposit of earnest money, the authorities could accept such a tender. Drawing support from its earlier decisions in the case of *C.J. Fernandez vs State of Karanataka*¹⁰ and *Ramana Dayaram Shetty vs International Airport Authority of India*,¹¹ their Lordships observed thus:

“As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of title or no significance. The requirements in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the conditions. In the first case, the authority issuing the tender may be required

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to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

As already stated, the individual partners of the Government contracts shall be equally treated and there shall not be any discrimination between the State and the individual contractor.

The State taking advantage of various supremacy shall not either violate or infringe or breach the contractual conditions. If it is so, the aggrieved person, i.e., either part of the contract any party can approach the judiciary to indemnify under Article 300 of the Constitution. The Courts in exercising the power of judicial review to confine itself to the question of legality.

Its concern should be (1) Whether a decision making authority exceeded its powers? (2) committed an error of law; (3) committed a breach of the rules of natural justice; (4) reached a decision which no reasonable tribunal would have reached; or (5) abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case.\textsuperscript{12}

While exercising the judicial review in the matter of the Government Contracts, the Court cannot act as an appellate authority or examine the details of terms of the contract. The primary concern of the Court is to see whether there is any infirmity in the decision making process.\textsuperscript{13}

\textsuperscript{12} Tata Cellular vs Union of India, AIR 1996 SC 11: (1994) 6 SCC 651 (1994) 6 JT 5321994) 3 Scale 4771995) 1 Arb LR 193, as referred in Centre for Public Interest Litigation vs Union of India, AIR 2000 SC 80 (90-91) 2000) 8 SCC 6062000) Supp 2 JT 2772000) 7 Scale 12000) 7 Supreme 160 2000) 7 SLT 6582001) 1 SRJ 435 2001) 1 Arb LR 3192000) 3 RAJ 380

The Courts can scrutinize the class of the contract by the Government or its agency in exercise of its power of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of the power of judicial review. The authorities inviting tenders are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though the decision of the Government is not amenable to the judicial review in such matters, the Court can examine the decision-making process and interfere if it is found to be vitiated by mala fides of unreasonableness and arbitrariness.

The parameters of judicial review in contractual matters could be stated as under:

(1) Judicial review is permissible both at the pre-contract stage and post-contract stage though the scope of interference varies depending upon the stage of review. The scope of judicial review in post-contractual matters is very much narrower.

(2) In pre-contract stage, the action of the State or its instrumentality has to satisfy the test of reasonableness as enunciated by the Supreme Court in various decisions interpreting Article 14 of the Constitution of India. Action should be fair, just reasonable and devoid of arbitrariness.

(3) The pre-contract stage squarely falls within the realm of public law character and, therefore, the decision must not only be tested by principles of Wednesbury’s principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides.

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(4) Post-contract stage falls within the realm of private law. But nonetheless the requirement of Article 14 and contractual obligations are not alien concepts. They can co-exist.

(5) Every holder of a public office by virtue of which he acts on behalf of a State or public body is ultimately accountable to the people in whom sovereignty vests. Therefore, even in this private law sphere when a public officer exercises power, it is in the nature of a public duty and, therefore, as his action is in import of public interest that factor alone is sufficient to import at least the minimum requirements of public law obligations. The requirement of Article 14 being the duty to act fairly, justly and reasonably, such action of a public officer in discharge of public duty should confirm to the said requirement of law.

(6) The order terminating a contract on the ground of breach of terms of the contract is not vitiated for not disclosing the reasons, the application of mind, by way of consideration of the case of the defaulting party. Such an order when challenged in Court could be justified by producing the relevant records and showing the application of mind to the said material after following the principles of natural justice which would meet the requirements of law as Courts are only concerned with the process of decision-making and not the decision itself.

(7) Even when some defect is found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and circumspection and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.

(8) Writ petition against a State and its instrumentality, arising out of contractual obligation is maintainable. Even disputed questions of fact
could be gone into, if necessary, by recording of evidence. Monetary claims can also be entertained. But the normal rule is not to entertain such claims. But only in exceptional cases when the circumstances warrant such an interference, the Court has the power and could be exercised. In other words, only in rarest of rare cases the exercise of power is justified. It is not want of power or jurisdiction. It is a case of self-restraint.

(9) A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by the State or a statutory body.

(10) The interpretation and implementation of a covenant in a contract ordinarily cannot be the subject-matter of a Writ Petition, and the same has to be determined according to the principles of the Contract Act.

While exercising the power of judicial review, the High Courts or the Supreme Court of India can interfere with the administrative, judicial or quasi – judicial order only if any illegality, irrationality and procedural impropriety has been committed therein.15

The Supreme Court in the case of Asia Foundation16, while considering the award of contract and acceptance of the tender in a project financed by Asian Development Bank at Malina (Manila) to the Paradeep Port Trust held as follows:

“Though the principle of judicial review cannot be denied so far as exercise of contractual powers of Government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the Court that in the matter of award of a contract power has

15 Khaitan (India) Ltd. vs Union of India, AIR 2000 Cal 1(4)
been exercised for any collateral purpose. It is not within the permissible limits of interference for a Court of law, particularly when there has been no allegation of malice of ulterior motive and particularly when the Court has not found any mala fides or favouritism in the grant of contract in favour of the successful bidder.

In the case of *Fertilizer Corporation Kamgar Union (Regd.) Sindri vs Union of India*, the Supreme Court held as follows:

“A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the Court until other ombudsman arrangement....emerges..... The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government Company has acted fairly, even if it has faltered in its wisdom, the Court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether that administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration”.

In the case of *Dinesh Engineering Corp.*, it was held as follows:-

“A public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by Courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely

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because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution”.

Bernard Schwartz19, stated as follows:

“If the scope of review is too broad, agencies are turned into little more than medial for the transmission of cases to the Courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the Judge, the right to review becomes meaningless. It makes judicial review of administrative orders a hopeless formality for the litigant.....It reduces the judicial process in such cases to a mere feint”.

The courts have maintained distinction between statutory contracts, on one hand, and non-statutory ones, on the other. While judicial review was held to be permissible, both as regards award and cancellation of the contracts of the former category, the same was confined to certain aspects in the latter category. If the termination of contract is on the ground that a party thereto had violated the conditions therefore, such party is invariably required to work out his remedies as provided for under the relevant contracts, viz., arbitration or civil suit, as the case may be. However, where an element of administrative exercise is undertaken and executive power is exercised, considerations and parameters are somewhat different. The evaluation of such administrative and executive exercise, which in turn had given rise to the cancellation of the contract, would almost be unsusceptible of adjudication

19 Administrative Law, 2nd Edn., p.584, as referred in Dhingra Construction Co.(M/s) vs Municipal Corporation of Delhi, AIR 2005 Del 247 (DB)
by a Civil Court. The reason is that the exercise of such administrative or executive power is not guided by the clauses in the contract. It is traceable to the inherent executive powers of the State and the only recognised mode of evaluation of such administrative power is judicial review, as provided for under Articles 32 and 226 of the Constitution of India.

In India the remedy for the breach of a contract with Government is simply a suit for damages. The writ of mandamus could not be issued for the enforcement of contractual obligations. But the Supreme Court in its pronouncement in Gujarat State Financial Corporation v. Lotus Hotels, has taken a new stand and held that the writ of mandamus can be issued against the Government or its instrumentality for the enforcement of contractual obligations. The Court ruled that it is too late to contend today the Government can commit breach of a solemn undertaking on which the other side has acted and then contend that the party suffering by the breach of contract may sue for damages and cannot compel specific performance of the contract through mandamus.

The doctrine of judicial review has extended to the contracts entered into by the State of its instrumentality with any person. Before the case of Ramana Dayaram Shetty vs International Airport Authority.\(^{20}\) The attitude of the Court was in favor of the view that the Government has freedom to deal with any one it chooses and if one person is chosen rather than another, the aggrieved party cannot claim the protection of article 14 because the choice of the person to fulfill a particular contract must be left to the Government, However, there has been significant change in the Court’s attitude after the case of Ramana Dayaram Shetty. The attitude for the Court appears to be in favor of the view that the Government does not enjoy absolute discretion to

\(^{20}\) (1979) AIR 1628
enter into contract with any one it likes. They are bound to act reasonably fairly and in
non-discriminatory manner.

In the case of Kasturi Lal vs State of J&K, in this case Justice Bhagwati has said “Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every government cannot act arbitrarily without reason and if it does, its action would be liable to be invalidated.” Non-arbitrariness, fairness in action and due consideration of legitimate expectation of affected party are essential requisites for a valid state action. In a recent case Tata Cellular vs Union of India, the Supreme Court has held that the right to refuse the lowest or any other tender is always available to the Government but the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

7.4 Ratification

The present position is that the contract made in contravention of the provisions of Article 299 (1) shall be void and therefore cannot be ratified.

The Supreme Court has made it clear that the provisions of Article 299 (1) are mandatory and therefore the contract made in contravention thereof is void and therefore cannot be ratified and cannot be enforced even by invoking the doctrine of Estoppel. In such condition the question of estoppel does not arise. The part to such contract cannot be estoppel from questioning the validity of the contract because there cannot be estoppel against the mandatory requirement of Article 299.

21 AIR 1996 SC 11
The Government cannot exercise its power arbitrarily or capriciously or in an unprincipled manner. In this case Justice Bhagwati has said “Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest: Government cannot act arbitrarily and without reason and if it does, its action due consideration of legitimate expectation of affected party are Court has held that the right to refuse the lowest or any other tender is always available to the Government but the principles laid down in article 14 of the Constitution have to be kept in view while accepting or refusing a tender. The right to choose cannot be considered to be an arbitrary power. Of Course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

In the case of *Shrilekha Vidyarathi v s State of U.P.*, the Supreme Court has made it clear that the State has to act justly, fairly and reasonably even in contractual field. In the case of contractual actions of the State the public element is always present so as to attract article 14. State acts for public good and in public interest and its public character does not change merely because the statutory or contractual rights are also available to the other party. The court has held that the state action is public in nature and therefore it is open to the judicial review even if it pertains to the contractual field. Thus the contractual action of the state may be questioned as arbitrary in proceedings under Article 32 or 226 of the Constitution. It is to be noted that the provisions of Sections 73, 74 and 75 of the Indian Contract Act dealing with the determination of the quantum of damages in the case of breach of contract also applies in the case of Government contract.

As per Section 65 of the Indian Contract Act, 1872, if the agreement with the Government is void as the requirement of Article 299 (1) have not been complied with, the party receiving the advantage under such agreement is bound to restore it or

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22 1991 S.C.C 212
to make compensation for it to the person from whom he has received it. Thus if a contractor enters into agreement with the Government for the construction of go down and received payment therefore and the agreement is found to be void as the requirements of Article 299 (1) have not been complied with, the Government can recover the amount advanced to the contractor under Section 65 of the Indian Contract act. Action 65 provides that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it to make compensation for it to the person from whom he received it.

In India Article 300 declares that the Government of India or a of a State may be sued for the tortious acts of its servants in the same manner as the Dominion of India and the corresponding provinces could have been sued or have been sued before the commencement of the present Constitution. This rule is, however, subject to any such law made by the Parliament or the State Legislature.

Judicial quest in administrative matters has to find the right balance between the administrative discretion to decide matters contractual or political in nature, or issues of social policy and the need to remedy any unfairness. A State need not enter into contract with anyone, but when it does so it must do so fairly without discrimination and without unfair procedure; and its action is subject to judicial review under Article 14 of the Constitution of India.23 The judicial power of review is exercised to rein any unbridled executive functioning. The restraint has two contemporary significances. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hallmark of judicial control over administrative action. Judicial review is concerned with not reviewing the merits of the decision in support

23 Eurasian Equipment & Chemicals Ltd vs State of West Bengal, [1975]2 SCR 674, AIR 1975 SC 266
of which the application for judicial review is made, but the decision making process itself. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in the administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of the Wednesbury principle of reasonableness (including its other facts) but must be free from arbitrariness not affected by bias or actuated by malafides.24

The Courts have adopted this view on practicable considerations. Modern government is a vast organization and its officers have to enter into a variety of petty contracts, many a time orally or through correspondence without strictly complying to the provisions under Article 299. In such a case, if what has been done is for the benefit of the government for its use and enjoyment, and is otherwise legitimate and proper, Section 70 of the Act should step in and support a claim for compensation made by the contracting parties notwithstanding the fact that the contract in question has not been made as per the requirements of Article 299. If Section 70 was to be held in applicable, it would lead to extremely unreasonable circumstances and may even hamper the working of government. Like ordinary citizens even the government should be subject to the provisions of Section 7025.

While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the 'decision making process'. By way of judicial review the Courts cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiries. But at the same time the Courts can certainly examine whether "decision making process" was reasonably rational, not arbitrary and

24 Tata Cellular vs Union of India, AIR 1996 SC 11
25 State of West Bengal vs B.K. Mondal, AIR 1962 SC 152
violative of Article 14 of the Constitution. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available, taking into account the the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of the selection made for entering into such contract\textsuperscript{26}.

The hypothesis for this thesis is reiterated once again as follows

Arbitrary acts by the government affects the other party when they are making contract with the governmental authorities.

Article 299 of the Indian Constitution is being a mere procedural compliance in government contracts than being a remedy to the individual.

Contribution by the Judiciary is the only solace in this issue due to the absence of effective legal mechanism.

The above given conclusion and analysis have thus proved and tested with the hypothesis.

7.5 Suggestions and Recommendations

- The act of the State while acting in a contractual obligation with another party shall not be arbitrary.
- Rationality should be one important aspect that has to be followed when the state is a contracting party.
- A definitive standard for government contract should be clearly given by legislative development in this area in India.

• The government should take steps to enact a legislation for the determination of governmental liability in governmental contracts in the model of some successful legislations worldwide.

• Judicial reliance by the non-governmental contracting parties in a government contract can be minimised by a separate legislative enactment in this area.

• The understanding and interpretation of Article 299 of the Indian Constitution by the Supreme Court of India gives us the need for amending the article so as to permit the best consolidated judicial interpretation to creep into the amendment.

• Law commission of India and other research agencies should make a detailed study for making a case for amendment to Article 299 of the Indian Constitution.

• There is a need to strike a balance between the constitutional rights of an individual and the contractual obligation of the government through the Indian Contract Act.

• The Government of India should strive to achieve equity, fairness, justice in governmental contracts for both the parties involved.

• The constitutional courts in the country should understand the balance of convenience in cases involving contractual breach of cases especially when government is the breaching party.

• The courts in India should try to follow the precedents rendered by the constitutional benches of the Supreme Court of India in cases relating to government contract obligations and breaches.
• Judicial clarity and sustainability should be achieved by the judicial perspectives achieved through judgements of the Supreme Court of India and all the High Courts in India in governmental contracts cases.

• Article 299 does not specify any mode and hence it is better for the government to maintain the same mechanism for governmental contracts and any change in the methods may be notified in the gazette.

• Lack of constitutional remedy should always not be understood as lack of contractual remedy. Thus the courts should be careful in rendering contractual remedies.

• Coordination between statutes creating contractual liabilities for the government and the Article 299 should be strived to be achieved in order to minimise the judicial cases in government contract cases.

• The concept of Public Policy should be well understood and defined by the contracting documents so as to avoid ambiguity between the parties entering into the contracts in future with reference to government contracts.

• Avoidance of implied contract by the government should be achieved by creating awareness among the governmental staff involved in governmental contracts.

• Strong application of contractual doctrines in cases of government contracts is the need of the hour and also understating the exceptions and limitations to these contractual doctrines will prevent the parties to a governmental contract from unnecessary litigation.
International standards in government procurements have helped in combating corruption and hence Indian legislation can also be in tune with such standards.

Application of the doctrine of restitution in Government contracts should be limited and minimal so as to safeguard the government interest and also to avoid misuse of such contractual doctrines.

Ratification should be allowed in a limited manner in a government contract but with proper safeguards for governmental interest. This will minimise the rigidity of the governmental obligation in governmental contracts.

There is a need for a new and separate jurisprudence to deal with all the above mentioned issues in governmental contracts.

7.5 Conclusion

The entire research work is done on the bedrock of the "THREE HYPOTHESES" shown above. The suggestion and recommendation enumerated herein above would depict the grey areas which in fact need immediate attention and consideration of the concerned authorities for striking a balance between the contracting parties to the Government Contracts as enshrined under Article 14 of the Constitution to minimize the burden of the Judiciary as there is a vacuum in the existing legal mechanism.