

- There is no specific law governing public procurement in India.
- A Public Procurement Bill was introduced in the Lok Sabha in May 2012 & referred to the Standing Committee on Finance the same month.
- But no report was submitted by the committee & the bill lapsed in 2014 with the dissolution of the 15th Lok Sabha
- The issue resurfaced during, Budget session for 2015–16, then Finance Minister Arun Jaitley recommended a procurement law & an institutional structure in line with the United Nations Commission on International Trade Law (UNCITRAL) model to avoid Malfeasance, in public procurement.
- In the absence of any specific law, public procurement and other related financial matters are governed by the General Financial Rules, 2017 promulgated by the Ministry of Finance.
- These rules are applicable to all central ministries , their attached and subordinate bodies.
- These are also applicable to the autonomous bodies which do not have their own govt-approved financial rules.
- The GFR 2017 is not applicable to the Central Public Sector Enterprises, including the Defence Public Sector Undertakings (DPSUs), which generally follow their own individual rules and procedures, approved by their respective Board of Directors. However, all these are largely inspired by & conform to, the public procurement principles laid down in the GFR 2017.
- The GFR 2017 allows ministries & departments, other than the MoF, also to issue instructions on specific aspects of the public procurement policy.
- Rule 15 of the 2017 Order directs the administrative ministries to issue instructions to the govt companies & other procuring entities under their control which are not governed by the GFR 2017
- Accordingly, the Department of Defence Production (DDP) has issued several instructions to give effect to the policy & procedure envisaged in the 2017 Order
- These instructions are applicable to all procuring entities under the administrative control of the Ministry of Defence (MoD), including the DPSUs and Ordnance Factory Board (OFB)
- Chapter 6 & other chapters of the GFR 2017 are too general to be of much practical use, for managing complex procurements.
- So the procuring departments are permitted by Rule 142 to issue detailed instructions, in

conformity with the general rules contained in Chapter 6

- So accordingly, the MoD has promulgated separate manuals under the aforesaid enabling clause in the GFR 2017
- Currently applicable, MoD manuals are:
 - (a) the Defence Acquisition Procedure 2020 (DAP 2020) for procurement of capital goods and services,
 - (b) Defence Procurement Manual 2009 (DPM 2009) for revenue procurement, and
 - (c) Defence Works Procedure 2020 (DWP 2020).

NEW DEFENCE ACQUISITION PROCEDURES 2020

- New Defence Acquisition Procedure (DAP 2020) was released in September 2020.
- Defence Ministry has removed the offset clause requirement in intergovernmental agreements (IGA) & has introduced a new category for leasing of military equipment .
- A defence offset policy was promulgated under the Defence Procurement Procedure (DPP-2005) ,with the objective that it would bring high-end technology to the country & help build the domestic defence industry.
- Under the offset clause, a foreign company that wins a defence deal is supposed to invest a part of the contract value in the country, thus developing skills & bringing in technology, while also generating employment.
- Under the DPP 2006 , the offset value was fixed at 30% of defence deals above ₹300 crore, which was revised to ₹2,000 crore in DPP 2016 for full-import deals.
- According to CAG report 2018 about 46 offset contracts were signed for ₹66,427 crore & till December 2018, ₹19,223 crore worth of offsets should have been discharged.
- Ministry accepted only ₹5,457 crore or 48% of these offset claims, while the rest were pending.
- The remaining offset commitments of about ₹55,000 crore would be due for completion by 2024, but the rate of the offset discharge has been about ₹1,300 crore per year.

RAFAEL DEAL OFFSET POLICY

- The Intergovernmental Agreement of the ₹60,000-crore deal for 36 Rafale fighter jets stated that the French side would facilitate implementation of 'Make in India' through offsets for 50% value of supply protocols
- The CAG said the French aircraft manufacturer, Dassault Aviation, and missile maker MBDA have till date "not confirmed" the transfer of technology to

the Defence Research and Development Organisation (DRDO) under the offset clause.

- According to the report, in September 2015, French companies Dassault Aviation & MBDA initially proposed to discharge 30% of their offset obligation in the Rafale deal by offering high technology to the DRDO.
- In April 2016, the DRDO identified six new technologies to be obtained from the firms under the offset obligations, but the vendors “did not agree on transfer of five technologies as most of them were not within the vendor’s core competence”.
- The sixth proposal of the DRDO was to obtain technical assistance for indigenous development of an engine, *Kaveri*, for the Light Combat Aircraft (LCA).
- Stating that in October 2019, the Ministry of Defence (MoD) had informed them that the vendor had not yet been able to confirm their capability for doing the requisite upgradation,
- According to CAG it is not clear if this technology transfer will take place, & there is need for MoD/DRDO to identify and acquire the right technologies in order to comply with the directions of Defence Acquisition Council (DAC) given in September 2016.”
- According to CAG report, “In many cases, it was found that the foreign vendors made various offset commitments to qualify for the main supply contract, but later were not earnest about fulfilling these commitments.”
- In the new DAP 2020, the government has removed the requirement for offset clause in IGAs or in Rafale-like deals
- According to Director General (Acquisition), some offset requirements have removed because they are not working. From now on, there will be no offset clause in government-to-government, single vendor and IGAs
- The draft DPP 2020 proposes higher levels of local content, new multipliers in defence offsets, a procurement category for leasing, and new options for equipment sustainment activity.
- The intent of the new DPP is to further promote indigenous design capacity and higher localisation, both of which, if implemented effectively, could potentially increase the role of domestic industry
- The most preferred category to process defence procurement, called Buy ‘Indian Indigenously Designed Developed and Manufactured’ or (Indian-IDDM), towers over and above all other categories in preference.
- Under Indian-IDDM, any order will require at least 50 percent indigenous content.
- This crucial industry policy document while favouring “Make in India” does not make provisions to analyse or compare the cost premium and

consequent potential decrease in output delivered in implementing such high levels of indigenous content in platforms.

- Indigenisation is about reducing dependency and increasing India’s capability to meet its own security needs.
- However, India lacks several core sub-systems manufacturing capability, production expertise, resulting in many of the systems being developed and produced for the first time in India.
- Consequently, the history of indigenous development in India is replete with examples of mismanagement, time delays, late stage design modifications and cost escalations.
- Risk assessment would be a major challenge when writing such contracts like leasing the equipments, with the need to allow for use, destruction and replacement in both peace and conflict
- Also, such options would need a through evaluation of the benefits and costs of leasing versus an outright purchase, where the purchase option requires the armed forces to assume the responsibility for maintenance, repair and replacement of equipment.
- DPP 2020, outlines the rules governing Strategic Partnerships in the manufacture of four programs — fighter aircraft, helicopters, armoured vehicles and submarines — to be done in collaboration with a domestic partner company in India.
- The rules place the burden of performance guarantees in terms of quality and timely deliveries on the foreign manufacturer owning a 49 percent stake while mandating the Indian partner to be the prime contractor and bidder.

CHANGE IN OFFSET GUIDELINES

- The development of two synergistic sectors – the civil aerospace & internal security- were part of the offset guidelines since DPP-2011, is no longer a core objective in the new guidelines.
- In comparison to the existing guidelines, the number of avenues for the discharge of offset has been reduced from six to five.
- The ‘investment in kind’, which was introduced in the DPP-2013, no longer remains a valid avenue.
- The Transfer of Technology (ToT), permitted as an avenue in the DPP-2013, has been given a renewed focus by permitting the foreign Original Equipment Manufacturer to obtain direct credit for ToT to the Indian industry to manufacture eligible items, identifying a list of 49 technologies for acquisition by the government entities involved in design and manufacture of defence items
- First time allowed the main offset providers to use their subsidiaries & other sister companies to fulfil offset obligations on their behalf.
- All the services, except for maintenance & repair and overhaul (MRO) related to aircraft and

helicopters, are no longer eligible for discharge of offset obligations.

- Abolition of banking provision from the new guidelines.
- The period of discharge is now limited to a maximum of two years beyond the period of the main procurement contract.
- However, the warranty period, which was earlier part of the procurement period, is delinked.

CO-DEVELOPMENT & CO-PRODUCTION IN DEFENCE

- Co-development & co-production projects were undertaken even prior to DAP 2020 promulgation.
- The BrahMos supersonic cruise missile, manufactured by BrahMos Aerospace—a joint venture of India's Defence Research and Development Organisation (DRDO) & Russia's NPO Mashinostroyeniya, is a prime example.
- The specific provisions in DAP 2020, though, are meant to enable the armed forces to initiate co-development and/or co-production proposals like any other acquisition proposal.
- The DAP 2020 permits the armed forces 'to work with a foreign entity to co-produce equipment/assemblies/subassemblies/spares', if the project aims at import substitution
- Such projects can be undertaken on a single vendor basis if no other country is willing to participate in the project or where the shortlisted vendor offers higher technology transfer
- Co-production would not involve development of a new technology or product.
- Such projects only need an agreement between the technology provider & the Indian manufacturer for transfer of proven technology

- Most of the capital acquisitions under categories like Buy (Indian), Buy and Make (Indian), and Buy (Global – Manufacture in India) would qualify as co-production projects
- Projects under the Make category / the Strategic Partnership Model are co-production projects, even with some design & development
- The DRDO is best suited to stewardship of projects, with collaboration involving private sector entities, or public & private sector entities
- DRDO scientists can use their experience in working with the Indian & foreign industry to provide the much-needed continuity in stewardship of the projects
- The 155 mm x 52 calibre howitzer used in ceremonial 21-shot salute at the Red Fort on the Independence Day- was developed by DRDO, in collaboration with Bharat Forge Limited & Tata Advanced Systems Limited
- The criteria for undertaking such projects are so expensive, and the need of the armed forces so pressing making intra- & inter-service prioritisation very difficult.
- In 2018, for example, India and the US had agreed on two 'pathfinder' projects for the joint production of a helmet-mounted digital display and a biological tactical detection system under the Defence Trade and Technology Initiative (DTTI)
- Biggest challenge in co-production with a foreign company is estimation of the cost of technology development as a part of the feasibility study.