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Legal and Constitutional Dimensions of Private Sector Participation in India's Défense Manufacturing Industry

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Abstract: *The article discusses some of the important legal issues raised by privatisation such as licensing and regulatory control, corporate responsibility, public procurement, competition issues, safeguarding of classified information, transfer of technology, intellectual property rights, labour implications and judicial review of defence procurement decisions. A comparative study of defence manufacturing models in selected jurisdictions is undertaken to identify global best practices and their relevance to the Indian context. The article highlights India's relative deficiencies in defence production as a significant challenge.*

There are substantial delays and inefficiencies in defence acquisition processes since they are centralized and involve several levels of decision-making. Salaries and pensions take up a large portion of defence spending, leaving little money for R&D and technical advancement.

India is still overly reliant on imports of cutting-edge military hardware from Russia, the West, and Israel, which limits its strategic independence and may make it vulnerable in times of geopolitical unrest.

Keywords: *defence, privatization, Aatmanirbhar Bharat, national security, Make-in-India.*

I. INTRODUCTION

Since ages India was dependent upon the foreign companies mainly on Russia to import the arms and ammunitions requirement for defence. The economic reforms of 1990s provided the foundation for shift from being dependent to being self-reliant. Make in India and Aatmanirbhar Bharat are stepping stones towards privatization shift. India is currently opening bids to involve private companies to manufacture the DRDO developed Astra Mark 2 missile. India has already opened the doors for the private sectors such as for aircrafts, drones, artillery and naval platforms. However, the missile manufacturing was under state run defence organizations. The public sector units face challenges such as slow technology upgradation, delayed projects, too many complex approvals and compliances. This paper aims at critical analysis of efficacy of private manufacturing companies over public Companies for defence production in India.

A. Evolution of Defence Manufacturing in India

A gradual shift has been witnessed in the defence manufacturing in India from dependency on imports to public driven model. After independence over a decade the production was entrusted to Defence Public Sector Undertakings (DPSU) and the Ordnance Factory Board, also there was limited or no participation of private sectors. The economic reforms of 1990 marked a new beginning by opening the doors for private sectors since 2001. The initiatives such as "Make in India" and "Aatmanirbhar Bharat" promoted the policy reforms in Defence Acquisition Procedure 2020, Positive indigenisation lists, the Innovations for Defence excellence (iDEX) programme and liberalisation in Foreign Direct Investment in defence manufacturing. indigenous defence production has increased from ₹46,429 crore in 2014–15 to nearly ₹1.78 lakh crore in 2025–26. Defence exports have grown from ₹686 crore in 2013–14 to ₹38,424 crore in 2025–26¹. Indian defence products are being exported to over 80 countries. Today, nearly 65% of India's defence equipment is produced in the country, a testimony to the country's journey from being one of the largest defence importers in the world to a rising global defence manufacturing and exporting hub, which can support national security as well as drive technological innovation and economic growth.

¹ Press Information Bureau. (2026). *Press release* (PRID No. 2222601). Ministry of Information and Broadcasting, Government of India. <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2222601®=3&lang=2> (<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2222601®=3&lang=2>)

II. LEGAL FRAMEWORK GOVERNING DEFENCE MANUFACTURING-

A. Constitutional Foundation

Under Article 246 of the Constitution the Parliament has exclusive power to make laws with respect to the matters falling under List I in the Seventh Schedule.

Following items are related to the Defence Industry-²

- 1) Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
- 2) Naval, military and air forces; any other armed forces of the Union. [2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]
- 3) Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
- 4) Naval, military and air force works. 5. Arms, firearms, ammunition and explosives.
- 5) Atomic energy and mineral resources necessary for its production.
- 6) Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.”

B. Legislations/Policy Regulations

In India, the defence procurement process is governed by two key manuals viz. the Defence Acquisition Procedure (“DAP”) and the Defence Procurement Manual (“DPM”). DAP applies to high value procurements funded through the capital budget and relates to the procurement of missiles, ammunition, advanced military systems and technology platforms. On the other hand, the DPM is responsible for procurement of secondary goods like equipment, spares etc and services like transportation, insurance etc. for all the wings of armed forces. The capital acquisition schemes under the DAP are of several types, for brevity this note will focus on the categories of ‘Buy’ and ‘Buy and Make’.

Industries (Development & Regulation) Act 1951 IDRA- This legislation regulates and governs industrial licensing for manufacturing defence items.

C. Defence Procurement Procedure

Defence Procurement Procedure streamlines and standardize defence procurement methods and office policies. India’s defence procurement framework has undergone multiple iterations over the last three decades, in response to changing strategic needs and industry feedback. Besides these revisions, a number of amendments have been introduced to improve procedural efficiency, known as Business Process Reengineering (BPR).

“DPP 1992 – The first structured procurement guideline.

DPP 2002, 2003, 2005, 2006, 2008, 2009, 2011, 2013, 2016 – Successive refinements incorporating transparency, efficiency, and accountability measures.

*Defence Acquisition Procedure (DAP) 2020 – The latest and most comprehensive framework, reflecting contemporary security requirements and promoting self-reliance under the Atmanirbhar Bharat initiative”.*³

The security manual has been divided into three parts; Category A, B & C. Depending on the products/weapons/equipment, the companies will be required to comply with the security protocol. Brief descriptions of categories are as follows:

Category-A: The products under this category would be highly classified and sensitive from the security angle and the manufacturing of these items would require the highest level of security.

Category-B: The products under this category includes semi-finished products, sub-assemblies. Sub-systems of main weapons/equipment/ platforms and some finished products of lesser degree of sensitivity.

Category-C: The products under this category would include products which do not involve use of any classified/secret information and are very generic in nature. The products in this category would normally be not specifically designed or modified for military use and therefore would require only a very minimal level of security.

² India Const. art. 246.

³ Singh, Col. D. K., VSM. *Defence Acquisition Procedure for a Resurgent Indian Defence Economy*. Centre for Joint Warfare Studies (CENJOWS).

D. Indigenization of “Make in India”

This initiative aims to promote domestic manufacturing along with defence. Legal incentives such as exemptions from tax and simplified licensing process helps enhancing self-reliance. “Make in India” in the defence sector will be guided by India’s defence procurement strategy since the government is the only consumer. The Defence Procurement aim, which gives preference to “Buy (Indian)” and “Buy and Make (Indian)” categories of procurement above “Buy (Global),” appropriately reflects the government’s aim of supporting the domestic defence sector.

Indian businesses are urged to collaborate with international businesses on joint ventures, technology transfer agreements, and tie-ups because they might not have sufficient technological capabilities.

International Agreements- MTCR, Missile Technology Control Regime regulates and controls the export of missile related technologies. The legal framework for India’s defence sector is designed to promote growth and self-reliance.

E. Role of Public Sector Undertakings

In terms of efficiency, Public Sector Undertakings (PSU) in India’s defence sector have a poor track record. It is frequently said that the Ordinance factory boards are quite ineffective. Hindustan Aeronautics Limited is infamous for its punctual order delivery. The PSUs are unable to meet the demands of the armed forces despite having a sizable and highly skilled workforce.

Sr. No.	Enterprise / PSU	Domain Sector	Key Products
1.	HAL (Hindustan Aeronautics Limited)	Aerospace	Aircraft, helicopters, engines
2.	BEL (Bharat Electronics Limited)	Electronics	Radar, communication systems
3.	BDL (Bharat Dynamics Limited)	Weapons	Missiles, weapon systems
4.	Mazagon Dock (Shipbuilders Limited)	Shipbuilding	Warships, submarines

Table: Major Defense Public Sector Undertakings (DPSUs) in India

Currently, there is no dependable method to measure the overall level of indigenisation in defence, as each domestically produced system may include multiple imported parts. A more straightforward method to calculate the Index of Atmanirbharta in Defence would be by assessing the ratio of defence equipment exports to imports. For example, according to the Minister of State for Defence, India’s arms exports in 2022-23 amounted to 15,920 crore, whereas imports totalled Rs 40,840 crore. However, if the figure is derived from the SIPRI report on the global arms trade, which stands at \$112 billion with India accounting for 11%, the import would amount to Rs 100 lakh crore. Depending on the figure used, the Atma Nirbharta index would range from 0.16 to 0.39.⁴ It is naturally anticipated to improve, given the focus on local manufacturing and exports.

Public sector undertaking (PSU) delays and performance shortfalls are typically addressed through parliamentary oversight, executive audits, and contractual penalty mechanisms rather than through litigated court precedents. The HAL- GE deal is in focus yet again. Hindustan Aeronautics has invoked contractual clauses to impose penalties on American firm General Electric for delays in the supply of F404 engines.⁵

The parliamentary Committee on Public Undertakings has slammed HAL for prolonged time taken to complete projects, incurring impaired costs, and thereby missing the strategic opportunities.⁶

Challenges such as project delays due to multiple layers of approvals, compliances leading to slow decision making. Foreign manufacturers use upgraded and new technologies which lacks in the in-state production of the arms making difficulties in being self-reliant.

State owned companies often lack finances to be spent on Research and Development resulting into slow innovations and productions as compared to global and private companies.

⁴ Aggarwal, Kapil. *The Defence Sector: Challenges to Self-Reliance*. India Foundation Journal.

⁵ Financial Express. (2024). *HAL vs GE: Hindustan Aeronautics invokes penalty clause over Tejas engine delays*.

<https://www.financialexpress.com/business/industry-hal-vs-ge-hindustan-aeronautics-invokes-penalty-clause-over-tejas-engine-delays-4193999/>

⁶ *Hindustan Aeronautics Ltd. v. Workmen and Others*, AIR 1975 SC 1737 (India).

III. CONCLUSION

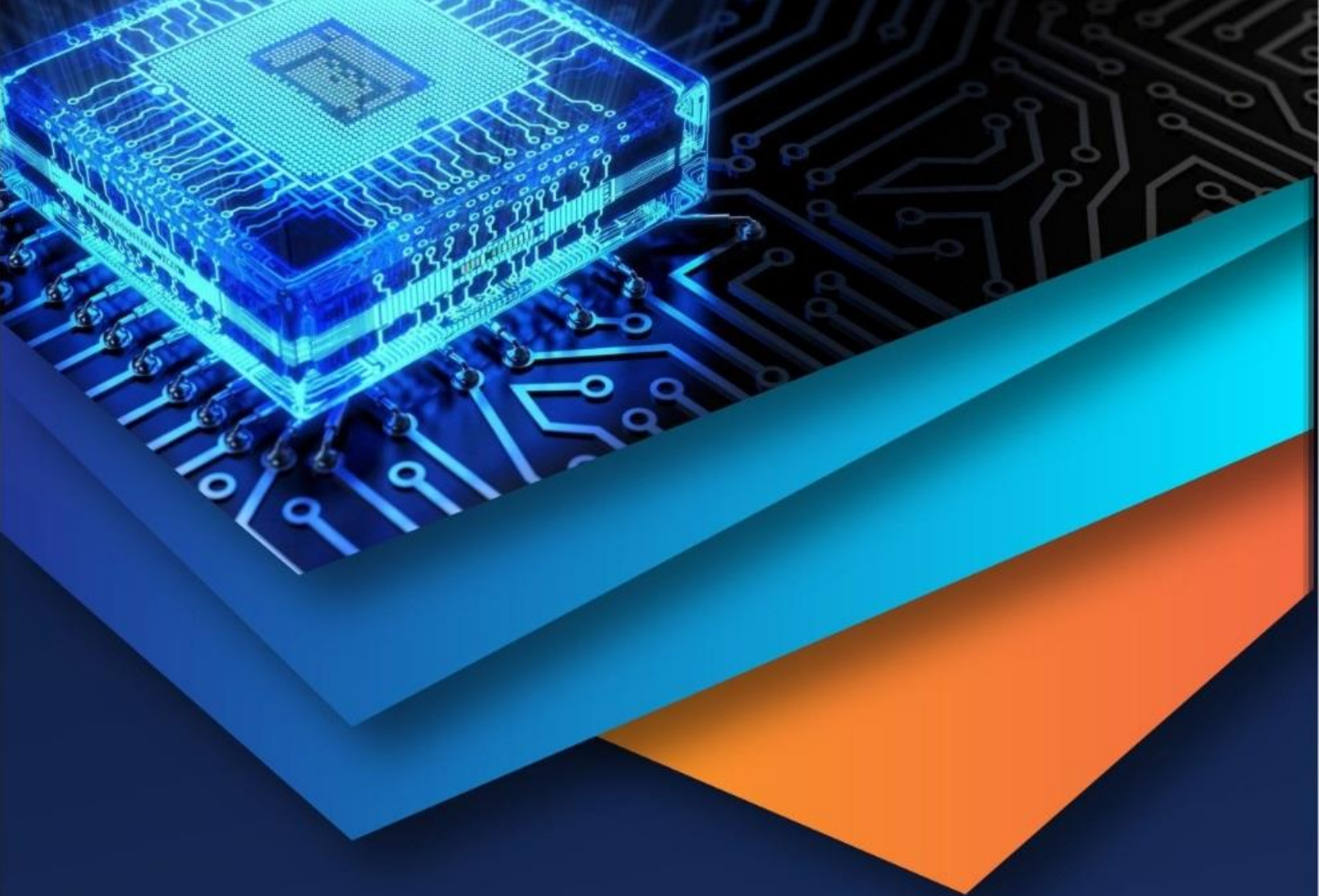
India's defence manufacturing landscape is undergoing a remarkable, long-overdue transformation. For decades, the nation relied heavily on foreign arms imports and a rigid, state-controlled production model led by Defence Public Sector Undertakings (DPSUs) and the Ordnance Factory Board. While well-intentioned, this centralized system often got bogged down by red tape, long delays, and skyrocketing procurement costs. Today, however, strategic shifts driven by initiatives like "Make in India" and "Atmanirbhar Bharat" are reshaping the industry, bringing the private sector into the fold as a key player.

India has developed a legal framework based on the constitutional power of Article 246 (List I of the Seventh Schedule) and frameworks such as DAP 2020, IDRA 1951 and security classification categories to work towards domestic growth.

Yet, the journey toward complete self-reliance is far from over. Real hurdles remain—from boosting underfunded R&D and simplifying complex compliance rules to managing technology transfer dependencies and accurately measuring true indigenization. To keep the momentum going, India must continue cutting through administrative delays, putting private enterprise on equal footing with public units, incentivizing innovation, and holding contractors accountable. By combining the reach of the public sector with the agility and innovation of private industry, India can build a resilient defence ecosystem that not only safeguards its national sovereignty, but also secures its place as a rising global defence manufacturing hub.

SUGGESTIONS

- 1) Streamline multi-tiered approval chains under the Défense Acquisition Procedure (DAP) 2020 to reduce acquisition timelines and avoid missing strategic opportunities.
- 2) Implement single-window regulatory clearances for private sector entities under the industries (Development & Regulation) Act, 1951 (IDRA) to minimize procedural friction.
- 3) Most of the budget goes to salaries and pensions. Create separate capital reserves for research development and technology improvement.
- 4) Scale up initiatives like Innovations for Defence Excellence (iDEX) to fund private enterprises, research institutions and defence startups which do not have the capacity to fund R&D on their own.
- 5) Put in place streamlined compliance protocols for Category A, B and C security classifications to provide high security, without too much friction, on generic (Category C) manufacturing.
- 6) Strict penalty clauses and auditing mechanisms for delay mitigation should be enforced in case of both Public Sector Undertakings (DPSUs) and private/foreign suppliers. Penalty clauses are called upon in international agreements.



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