



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## LEGAL ARCHITECTURE AND TRANSPARENCY PARADIGMS IN INDIAN PUBLIC SECTOR PROCUREMENT: A COMPREHENSIVE CONSTITUTIONAL AND REGULATORY ANALYSIS

~ *Utkarsh Yadav & Akanksha Choudhary*

### Introduction

Public procurement in India occupies a central position within the country's constitutional, administrative, and economic framework. As the Indian State and Public Sector Undertakings (PSUs) collectively represent one of the largest consumers of goods, infrastructure, consultancy services, and technology, procurement has evolved beyond a routine governmental function into a strategic instrument of governance and economic policy. Public procurement is estimated to account for nearly thirty percent of India's Gross Domestic Product (GDP), thereby influencing industrial growth, market competition, fiscal management, and social welfare. Consequently, the manner in which public contracts are awarded and executed directly affects public confidence in governance and the constitutional legitimacy of state action.

Unlike private commercial transactions, government procurement is governed not merely by principles of contract law but also by constitutional obligations of fairness, transparency, equality, and accountability. Public authorities are custodians of taxpayer resources and are therefore bound by the Public Trust Doctrine, which requires that every expenditure of public funds be justified through lawful, rational, and non-arbitrary procedures. This constitutional dimension distinguishes public procurement from ordinary commercial contracting and subjects procurement decisions to judicial scrutiny under Articles 14, 19, and 226 of the Constitution of India.

The legal framework regulating procurement in India has developed through a combination of constitutional provisions, financial rules, vigilance mechanisms, technological reforms, and judicial precedents. Articles 298 and 299 of the Constitution provide the formal basis for government contracting, while Article 14 imposes substantive obligations of equality and non-arbitrariness upon all procurement decisions. Over time, the General Financial Rules (GFR), procurement manuals, Central Vigilance Commission (CVC) guidelines, Government e-Marketplace (GeM), competition law, and the Right to Information Act, 2005 have collectively shaped a sophisticated procurement ecosystem designed to balance commercial efficiency with constitutional accountability.

This paper critically examines the constitutional foundations, regulatory architecture, judicial doctrines, and technological innovations governing public procurement in India. It argues that the future success of India's procurement system depends upon maintaining an equilibrium between administrative efficiency and constitutional discipline, transparency and confidentiality, as well as commercial autonomy and public accountability.

### **Constitutional Foundations of Public Procurement**

The constitutional authority of the government to enter into contracts originates primarily from Articles 298 and 299 of the Constitution of India. Article 298 empowers the Union and State Governments to carry on trade or business and to acquire, hold, and dispose of property. This provision grants the executive broad commercial powers comparable to those enjoyed by private entities in the marketplace. However, because the State operates using public funds, its contractual powers are subject to constitutional limitations designed to prevent misuse, corruption, and arbitrary decision-making.

Article 299 establishes mandatory procedural safeguards governing government contracts. According to Article 299(1), every contract made in the exercise of executive power must be expressed to be made in the name of the President or Governor, executed on their behalf, and signed by an officer duly authorized for that purpose. These requirements are mandatory rather than directory and serve as a constitutional shield protecting the public exchequer from unauthorized liabilities.

The Supreme Court in *State of Bihar v. Majeed* emphasized that compliance with Article 299 is essential in addition to the ordinary requirements of the Indian Contract Act, 1872. The Court held that oral agreements or informal understandings cannot bind the government. Such strict interpretation ensures financial discipline and prevents fraudulent claims against the State.

At the same time, Indian courts have recognized equitable principles to avoid unjust enrichment. Even where a contract is technically void due to non-compliance with Article 299, compensation may still be awarded under Sections 65 and 70 of the Indian Contract Act if the government has accepted and benefited from the work performed. This doctrine of quantum meruit ensures fairness while preserving constitutional safeguards.

### **Article 14 and the Constitutional Duty of Fairness**

While Article 299 governs the formal validity of contracts, Article 14 governs the substantive fairness of procurement decisions. Article 14 guarantees equality before the law and prohibits arbitrary state action. Since government contracts involve the distribution of public resources and economic opportunities, procurement authorities cannot act according to private discretion or favoritism.

The transformative interpretation of Article 14 emerged through judicial decisions such as *Maneka Gandhi v. Union of India*, where the Supreme Court held that every state action must be “just, fair, and reasonable.” This principle fundamentally altered public procurement law by requiring transparency, objectivity, and rationality throughout the tendering process.

The doctrine was further strengthened in *Ramana Dayaram Shetty v. International Airport Authority of India*, where the Court ruled that the government cannot behave like a private individual while distributing public contracts. Tender conditions must be applied uniformly, and all eligible bidders must receive equal treatment. Any deviation from predetermined criteria or arbitrary relaxation of conditions would violate Article 14.

Consequently, procurement authorities are constitutionally obligated to ensure that tender conditions are reasonable, evaluation criteria are disclosed in advance, and decisions are supported

by objective considerations. The State's freedom of contract is therefore subordinate to constitutional norms of fairness and transparency.

### **Regulatory Framework Governing Public Procurement**

India does not presently have a comprehensive national procurement statute. Instead, procurement is governed through a multi-layered regulatory structure consisting of constitutional principles, financial rules, procurement manuals, vigilance guidelines, and digital procurement policies. While this decentralized framework offers administrative flexibility, it also creates interpretive complexity and overlapping compliance obligations.

The General Financial Rules (GFR), 2017 constitute the foundational code governing financial propriety in Union Government procurement. Originally introduced in 1947 and subsequently revised in 1963, 2005, and 2017, the GFR establishes principles relating to budgeting, expenditure, procurement procedures, and accountability.

Rule 21 of the GFR embodies the doctrine of financial propriety by requiring every public official to exercise the same degree of caution in spending public funds as an ordinarily prudent person would exercise in spending personal funds. The rule also prohibits officials from sanctioning expenditure that directly or indirectly benefits themselves, thereby codifying conflict-of-interest principles.

To operationalize the GFR, the Ministry of Finance issues specialized procurement manuals for goods, consultancy services, and works contracts. The 2024 Procurement Manual introduced important reforms relating to conflict-of-interest disclosures, performance securities, price variation clauses, and delayed procurement safeguards. These manuals provide procedural clarity and reduce administrative discretion.

In addition, the Central Vigilance Commission (CVC) plays a crucial role in embedding transparency and accountability into procurement practices. The CVC requires wide publicity of tenders, objective eligibility criteria, restricted negotiations with the lowest bidder, and maintenance of complete audit trails. Through preventive vigilance, the CVC attempts to eliminate opportunities for corruption before irregularities occur.

## **Integrity Mechanisms and Anti-Corruption Safeguards**

One of the most significant innovations in Indian procurement law is the adoption of the Integrity Pact system. Developed to combat corruption in high-value public contracts, the Integrity Pact represents a binding agreement between the procuring authority and bidders that neither party will engage in bribery, collusion, or unethical practices.

Independent External Monitors (IEMs), typically retired judges or senior civil servants, supervise compliance with the Integrity Pact. They investigate complaints, monitor procurement procedures, and recommend corrective measures. Violations may result in cancellation of contracts, forfeiture of bid securities, or debarment from future tenders.

The Integrity Pact mechanism has substantially improved institutional transparency by creating an internal accountability structure capable of addressing grievances before disputes escalate into litigation. It also reflects the broader constitutional objective of promoting integrity in public administration.

## **Digital Transformation Through Government e-Marketplace (GeM)**

The launch of the Government e-Marketplace in 2016 marked a transformative shift in India's procurement architecture. GeM was introduced as a digital procurement platform intended to create a paperless, contactless, and cashless ecosystem for government purchases.

The platform replaced the earlier Directorate General of Supplies and Disposals (DGSD) model, which was often criticized for inefficiency, opacity, and restricted market access. GeM introduced features such as digital signatures, reverse auctions, automated vendor comparison, online payment systems, and end-to-end audit trails.

One of the most significant achievements of GeM has been the democratization of procurement opportunities. Small and Medium Enterprises (MSMEs), startups, and regional suppliers now have access to a national procurement marketplace previously dominated by large established contractors. In FY 2025 alone, GeM reportedly processed procurement orders worth more than ₹4 lakh crore.

However, digital procurement has also generated new challenges. Concerns have emerged regarding algorithmic manipulation, shell companies, inflated pricing, and coordinated bidding. Investigations into irregular GeM procurements in Bihar during 2026 highlighted the need for stronger technological audits and forensic data analysis.

Therefore, while GeM has enhanced efficiency and transparency, the future effectiveness of digital procurement depends upon integrating advanced compliance monitoring systems capable of identifying sophisticated forms of digital fraud.

### **Judicial Review of Procurement Decisions**

Judicial review plays a critical role in maintaining constitutional accountability within public procurement. Courts do not function as appellate authorities over commercial decisions; instead, their role is confined to examining whether the procurement process is lawful, rational, and procedurally fair.

The leading precedent governing procurement review is *Tata Cellular v. Union of India*. In this landmark judgment, the Supreme Court held that judicial review in tender matters is limited to examining illegality, irrationality, and procedural impropriety. The Court adopted the *Wednesbury* principle of reasonableness and emphasized that judges should not substitute their commercial opinions for those of procurement authorities.

Subsequently, in *Michigan Rubber (India) Ltd. v. State of Karnataka*, the Court held that eligibility criteria such as turnover requirements and technical qualifications are policy decisions ordinarily immune from judicial interference unless manifestly arbitrary or discriminatory.

The judicial philosophy shifted further toward restraint in *N.G. Projects Ltd. v. Vinod Kumar Jain*, where the Supreme Court observed that infrastructure projects should not be stalled for minor procedural irregularities. The Court emphasized that public interest in timely completion outweighs private commercial disputes and suggested that aggrieved bidders should ordinarily seek damages instead of injunctions.

This evolution demonstrates a gradual transition from aggressive constitutional scrutiny toward a more balanced model prioritizing economic efficiency and infrastructure development.

### **Competition Law and Bid Rigging**

Public procurement is also regulated through competition law mechanisms aimed at preventing cartelization and collusive bidding. Section 3(3)(d) of the Competition Act, 2002 prohibits bid rigging and anti-competitive agreements in tendering processes.

Bid rigging can take several forms, including cover bidding, bid rotation, market allocation, and subcontracting arrangements designed to manipulate competition. The Competition Commission of India (CCI) investigates suspicious patterns such as identical pricing, coordinated timing of submissions, common typographical errors, and shared IP addresses.

A notable example is the KKK Mills Case, where the CCI found textile companies guilty of collusive bidding in defence procurement tenders. Although the Commission issued cease-and-desist orders, it refrained from imposing heavy penalties due to the firms' MSME status and financial conditions. The decision reflects a balanced enforcement approach that seeks to deter anti-competitive conduct without disproportionately harming small enterprises.

### **Transparency, RTI, and Commercial Confidentiality**

Transparency in procurement is further strengthened by the Right to Information Act, 2005. Procurement documents such as tender notices, award details, and evaluation reports are generally subject to disclosure under the RTI framework.

However, Section 8(1)(d) of the RTI Act exempts trade secrets and commercially confidential information where disclosure would harm competitive interests. Courts and Public Information Officers must therefore balance transparency against legitimate commercial confidentiality.

The law recognizes a "public interest override," meaning confidential information may still be disclosed where larger public interest demands transparency. Before releasing third-party commercial information, authorities must follow the consultative process under Section 11 of the RTI Act.

This balancing exercise reflects the broader constitutional challenge of reconciling openness in public administration with the protection of proprietary commercial information.

### **Debarment and Principles of Natural Justice**

Debarment or blacklisting is one of the harshest sanctions available in procurement law because it effectively excludes contractors from future business opportunities. Since blacklisting directly affects the constitutional right to trade under Article 19(1)(g), courts require strict adherence to principles of natural justice.

Before imposing debarment, procurement authorities must issue a detailed show-cause notice, provide a meaningful opportunity of hearing, consider the contractor's explanation, and pass a reasoned order. The doctrine of proportionality also requires that the duration and scope of debarment correspond to the gravity of misconduct.

Permanent blacklisting is generally viewed as disproportionate and unconstitutional because it imposes excessive commercial disability. Courts therefore insist that procurement sanctions remain fair, reasonable, and proportionate to the underlying violation.

### **Conclusion**

The legal architecture governing public procurement in India has evolved into a sophisticated constitutional and regulatory framework designed to ensure accountability in the expenditure of public resources. Articles 298 and 299 provide the formal legal basis for government contracting, while Article 14 infuses every procurement decision with the principles of fairness, transparency, and non-arbitrariness.

The General Financial Rules, procurement manuals, CVC guidelines, Integrity Pact system, GeM platform, competition law mechanisms, and RTI obligations collectively operationalize these constitutional principles in practical governance. Simultaneously, the judiciary has developed a nuanced doctrine of review that seeks to prevent arbitrariness without undermining commercial efficiency or delaying public infrastructure projects.

The future of Indian procurement law lies in strengthening institutional integrity while adapting to emerging technological and economic realities. India requires a comprehensive national procurement statute capable of harmonizing existing regulations and reducing interpretive inconsistencies. Digital procurement systems must be supported by advanced algorithmic audits and forensic compliance mechanisms to combat sophisticated fraud.

Ultimately, public procurement is not merely a contractual process but a constitutional exercise involving public trust, democratic accountability, and economic governance. When transparency, efficiency, competition, and fairness are harmonized, procurement becomes a powerful instrument for promoting constitutional values and advancing national development.

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