



Flying in the face of the demand for transparency

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The Comptroller & Auditor General's report on the Rafale deal is a let-down

- The report of the Comptroller & Auditor General (CAG) on the Rafale fighter aircraft deal throws up more questions than it answers.
- This aircraft deal is referred to as an Inter-Government Agreement (IGA) — between France and India.
- The nomenclature itself is difficult to understand in the context of events prior to April 10, 2015 when the Prime Minister decided, in a public pronouncement, to purchase 36 Rafale aircraft manufactured by France's Dassault.
- The United Progressive Alliance (UPA) government, through a global tender, had shortlisted two fighter aircraft: Dassault's Rafale and the Eurofighter Typhoon, which is made by four European nations.
- The price bid of the Rafale was found to be lower than that of the Eurofighter.
- The UPA then decided to negotiate the terms and conditions for the acquisition of 126 Rafale aircraft.
- This was not a government-to-government (G-to-G) contract, since any contract pursuant to a global tender cannot possibly be G-to-G.
- No global tenders were floated when the UPA bought defence equipment from either Russia or the United States; these were G-to-G contracts.
- Under the UPA's 126 planes deal, 18 were to be manufactured by Dassault and the remainder, 108, were to be manufactured by the Hindustan Aeronautics Ltd. (HAL) under transfer-of-technology by Dassault.

Akin to a new deal

- Following the Prime Minister's decision, the consequence was that all

conditionalities relating to the purchase of the aircraft, including its price, were to be negotiated post his announcement, and contrary to Defence Procurement Procedures (DPP).

- In one sense, given the manner it was done, the purchase of the 36 aircraft was an entirely new deal.
- The deal is not even an IGA, far from it being a G-to-G contract, because Dassault, a private company, and not the French government, is the supplier of the 36 aircraft.
- Consequently, the French government has refused to guarantee the supply of the aircraft in terms of the contract.
- Since Dassault was responsible for the supply, the contract should have retained the integrity clause along with clauses pertaining to commissions.
- The clauses relating to penalties and anti-corruption should not have been excluded.
- The PMO, presumably, intervened to have these clauses removed.

Many faultlines

- The CAG has let us down in more than one way.
- First, its report limits itself to the pricing issue of the 36 aircraft and concludes that the deal was 2.86% cheaper than the one which was to have been finally negotiated by the UPA.
- The CAG report does not disclose all the facts and on non-transparent assumptions arrived at this conclusion.
- Second, the CAG has chosen not to deal with the cavalier manner in which the Prime Minister picked 36 aircraft off the shelf.
- Third, the report ignores the procedures required to be followed under the DPP of 2013.
- It also chooses not to refer to the dissent notes of the Indian Negotiating Team and thus fails to provide justification for overruling them.
- Further, it fails to explain the reasons why the anti-corruption and other clauses were not included in the final terms of the contract.
- Though the CAG comments on the issue of financial impact of not providing for guarantees, it chooses not to deal with reasons why guarantees were not provided for.
- What is most surprising is that the CAG seeks to criticise the UPA for choosing the Rafale but is silent on the Prime Minister's decision to endorse the purchase of the aircraft.