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Public-Private Partnership (PPP) Framework in India: An Analysis

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ABSTRACT

The paper focuses on the collaboration between governments and private companies to provide public services or infrastructure. Public-private partnerships includes the large-scale government projects, are roads, bridges, and hospitals, to be finished with private funding. The paper highlights the model leverages the effectiveness of private sector entities in preparation and implementation, which is often better to established public sector approaches. The paper addresses the challenge of designing, maintaining, constructing, financing and public sector infrastructural projects. Public-Private Partnership is to united government oversight with private sector competence and funding to deliver public road, rail network and services.

Keywords: Public, private, government, partnership, management, infrastructural and maintenance

INTRODUCTION

The Government of India recognizes several types of PPPs, including: User-fee based BOT model, Performance based management/maintenance contracts and modified design-build (turnkey) contracts. Today, there are hundreds of PPP projects in various stages of implementation throughout the country. Governments, the world over, increasingly look towards the private sector to help Bridge the infrastructural gap. The World Bank database provides evidence that in the last 25 years, the private investments taking the PPP route have been consistently increasing. At be same time, the trends also show that while the financial value of investments are continuously on the rise, the number of projects being taken up within the PPP fold are steadily falling This guidance when supplemented with what academia and press, as a reflection of the public opinion, has to say about PPPS puts forward a totally different story.

The concept of PPP is being regularly challenged. Academicians recognize the problems in defining accurately what PPPS are, debates upon theories to be used to govern PPPS and PPP implementations lacking a robust governance framework. The media and practitioner writings are galore with the PPP failure stories and at least in the developing world context (especially India), experts have already written an obituary of PPPS in India. Many high profile Indian transport sector PPPS have witnessed ugly private-government contests in courts, bureaucratic offices, political debates, and media circles. However, the story is not unique only to India. The world over, the PPP concept has come in for some serious criticism. "Public–private partnerships have been implemented in multiple countries and are primarily used for infrastructure projects. Although they are not compulsory, PPPs have been employed for building, equipping, operating and maintaining schools, hospitals, transport systems, and water and sewerage systems" (Bovaird, Tony 2015)

Origin of the PPP: The PPPS have come a long way since they were first conceived. Some trace its origin back to 1438, when a concession was awarded to a French nobleman Luis de Bernam to charge the fees for goods transported on the Rhine, or to the early 1600s, when the British crown allowed the East Indian company, a private enterprise to explore the east and exploit what it finds there in return for a fixed share. The public–private partnership (PPP or 3P) is a commercial legal relationship defined by the Government of India in 2011 as "an arrangement between a government / statutory entity / government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative"(web)

The PPP means an arrangement between a government or statutory entity or government- owned entity on one side and a private sector entity on the other, for the provision of public assets and related services for public benefit, through investments being made by the private sector entity for a specified time period, where there is a substantial risk sharing with the private sector and the private sector receives performance-linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.

Recent failure of Water PPPs to deliver, is now putting the model into question. 1) First, the local community was never consulted on the project, and a public outcry ensued when information was finally shared 2) Second, there have been serious delays in the construction and operation of water provision. And third, the public purse has been and could in future be hit hard. "First, the local community was never consulted on the project, and a public outcry ensued when information was finally shared"(Gaurav Dwived 2015)

Problems with Defining the PPP: Across the numerous definitions, there is a universal emphasis that PPPS involve both public and private parties, they involve delivery of a service or asset that has some public goods characteristics, they involve a transfer of a significant amount of project risk to the private parties and private parties seek some performance-based returns from them. Besides these common elements, academicians, governments, and multilateral agencies tend to further specify and restrict what will get categorized y them as a PPP and such restrictions, in effect, lead to corruption of the PPP concept and many he problems in current age of PPPS can be traced to this overloading of the PPP concept with these evolved understandings.

PPPs often get described in terms of the bundling of the project activities that they involve and the en-block transfer of the risks associated with this bundle to the private sector. For instance, the various kinds of PPP projects i.e., BOT, BOLT, DBFOT, have progressively sought to add more and more project activities to the PPP. Bundling makes the PPP grow in size to such a level that they become virtual monopolies and with the inherent transfer of risks to private agencies involved in PPPS, these monopolies get transferred to the private domain. Examples lie in the Indian highway PPP projects of Yamuna and KMP expressway.

The problems in the project have been traced to the bundling of the land parcels with the highway project. Infrastructure in India is poor when compared to similarly developed nations. The Government of India identified public–private partnerships (PPP) as a way of developing the country's infrastructure. "In India, no city yet offers continuous (24/7) water supply.[dubious – discuss] The quality of the water supply service is low, with non-revenue water being as high as 40 percent in most cities.

The poor are particularly affected by this situation and end up paying more for a liter of water than their wealthier counterparts. With the objective of widening access to water services and making water services more sustainable, the Government of India promoted PPPs in the water sector in the 1990s. However, this attempt failed as the Government did not manage to create a good enabling environment for private investment" (SR, Ramanujam; Miller, 1-72)

Long-Term Contracts: The term of a PPP is another of its non-core aspect. Some definitions, like that proposed for GOI, while preventing PPP contracts from running into perpetuity, also mandate them to extend to more than three years. At the same time, PPPS in infrastructure often get labeled as Long term infrastructure contracts. While in the shorter term, risk can be forecasted and risk mitigation can be done, as the time span increases the risks tend to become uncertainties. Consequently, PPP projects get exposed to aspects for which no strategy for mitigation exists. The longer term nature of PPPS increases their exposure to environmental uncertainty, and even minor errors in the initial assumptions, have adverse large bearings on the project.

Legally Binding Contractual Nature: it is more often than naught; PPPS are specified to constitute legally bound and rigid contractual agreements, as one party, is the government and for it only formally signed understandings are necessary. Such contractual agreements, while serving to protect the interests of the parties in the contract, severely restrain the flexibility in the project itself and significantly limit its capacity to adapt to changing circumstances.

Rigid and legally bound contracts adversely affect the outcome of the project and severely limit its deliverability. "PPPs are structurally more expensive than publicly financed projects because of the private sector's higher cost of borrowing, resulting in users or taxpayers footing the bill for disproportionately high interest costs. PPPs also have high transaction costs" (Whiteside, Heather , 2016)

Simultaneous Impact: The extension of the basic PPP concept to large scale bundling of activities, long term, and rigid contracting, all together, converts PPP projects into monolithic giants and coupled with the fact that they are for delivery of public services they acquire the status of monopolies in private hands. "To help finance the cost incurred towards development of PPP projects (which can be significant, and particularly the costs of transaction advisors), the Government of India has launched in 2007 the 'India Infrastructure Project Development Fund' (IIPDF) which supports up to 75% of the project development expenses" (web)

The Indian Context: The Jaipur Metro's inability to land a domestic private partner is bizarre in a country billed as the world's largest PPP market, with 900-odd projects under various stages of execution. The halcyon period seems long ago now. The PPP tale has since taken a harsh twist. In the last five years or so, the PPP model across sectors has been beset with troubles, raising fundamental questions on the existing framework. “The term can cover hundreds of different types of long-term contracts with a wide range of risk allocations, funding arrangements, and transparency requirements” (Hodge, G. A and Greve, C. 2007)

Examples are legion: ADAG-led? 5,800 crore airport metro link in Delhi, GMRs Re 7,790 crore Kishangarh-Udaipur-Ahmadabad highway projects, Emaar-MGFS Commonwealths Games Village project. The ominous signs are already palpable. In 2014-15, for example, there was no bidder in as many as 16 PPP road projects advertised by the NHAI

What can be done? The Vijay Kelkar Panel recommended various measures for the revival of the PP? Model recommended for the strengthening of three main pillars of the PPP framework viz. Governance, Institutions and Capacity. The report endorsed setting up of a 3PI (a PPP institute of excellence for supporting institutional capacity building activities. The Prevention of corruption Act 1988 should be amended at the earliest to punish corrupt practices while saving those who made genuine mistakes in decision-making. Swiss Challenge Method of awarding contracts should be avoided it discourages transparency.

Unsolicited Proposals encourages unequal treatment of potential bidders in the procurement process, so they should be discouraged. For sourcing long-term apical at low-cost, banks and financial institutions should be encouraged to issue deep discount bonds. After successful completion of the projects, equity in the project may be offered to long m investors including overseas institutional buyers. Independent sectoral regulators should be set up as and when a new sector is declared to adopt the PPP model. For rational allocation of risks among various stakeholders, the Model Concession Agreement should be revisited.

The One-sine-fis-all approach should be avoided and project-specific risk assessment should be undertaken. The private sector should be protected against any abrupt changes in the economic or policy environment. “The poor are particularly affected by this situation and end up paying more for a litre of water than their wealthier counterparts. With the objective of widening access to water services and making water services more sustainable, the Government of India promoted PPPs in the water sector in the 1990s.” (SR, Ramanujam, 2014) However, this attempt failed as the Government did not manage to create a good enabling environment for private investment and poor project preparation. Furthermore, there was important opposition to private sector involvement in water delivery.

The government may develop a PPP law with an endorsement from Parliament. It gives an authoritative framework to implementing executives along with oversight responsibility to the Legislature and regulatory agencies. Infrastructure PPP Project Review Committee should be as for evaluating and sending recommendations in a time-bound manner for stress in projects under the PPP model.

An Infrastructure PPP Adjudication Tribunal should be set up. The state owned enterprises and public sector undertakings should not be allowed to bid for the PPP projects. A dispute resolution mechanism is needed to allow restructuring within the commercial and financial boundaries of the project. PPP model is not recommended for small scale projects in view of the transaction costs involved.

CONCLUSION

The existing PPP model is hobbled by a lack of flexibility in contractual arrangements. Court cases that drag on forever mean enforcing contracts face delays. Then there is aggressive bidding manipulation in project costs by private players. As if these weren’t enough, the PPP model has been further choked by the dying appetite of infrastructure powerhouses. It is time to emphasize are the 4 'R's- Risk allocation, Regulation, Renegotiation and Resource-raising and at the same use devise a solution to get the model off its deathbed and turn it into its sprightly self once again.

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