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Issues and Prospects of Public Private Partnership in India

Ms Vandana | Assistant Professor in Commerce, C.I.S. Kanya Mahavidhayala, Pundri, Kaithal.

ABSTRACT

Infrastructure bottleneck is a serious concern in India in its way of robust pace of economic progression. While many advanced economies and fiscal constrained developing countries have developed their physical infrastructure successfully either through private participation or through public-private partnership (PPP) model, in India, private participation in the process of infrastructure development has received lacklustre response.The main focus of this paper is to provide the conceptual framework and the status of private participation. It also identifies some generic issues such as inadequate transparency of procedures, inappropriate risk allocation, improper project appraisal, cost and time overruns, overlapping of regulatory independence, dearth of good governance, etc., which need attention to attract private investors to participate in the public infrastructure building.

KEYWORDS : Infrastructures, Public Private Partnership (PPP), Government

Introduction :

Partnerships with private sector is an attractive alternative for meeting the challenges of the growing demand for new and better infrastructure services with limited resources. The partnership is built through a legally binding contract on the expertise of each partner that meets clearly defined public needs through the appropriate allocation of resources, risks, responsibilities and rewards. PPP is a viable project implementation mechanism for a preferred solution option and it s not a solution option to an infrastructure service problem. According to Department of Economic Affairs, Ministry of Finance, Government of India (GOI) and Asian Development Bank, "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/ or related services for public benefit, through investments being made by and/or management undertaken 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." Here, Private Sector Company means a company in which 51% or more of the subscribed and paid-up equity is owned and controlled by a private entity.

Though, there is no single definition of PPPs, the primary aim of this cooperation broadly refers to long-term, contractual partnerships between the public and the private sector agencies, specifically targeted toward financing, designing, implementing, and operating infrastructure facilities and services that were traditionally provided by the public sector. In accordance with the Asian Development Bank (ADB) reports, effective PPPs recognize that the public and the private sectors each have certain advantages, relative to the other, in performing specific tasks. The government's contribution to a PPP may take the form of capital for investment (available through tax revenue), a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, local knowledge, environmental awareness, and the capacity to mobilize political support. The responsibility of the private sector in the partnership is to make use of its knowledge and proficiency in commerce, management, operations, and innovation in order to run the business more professionally and efficiently.

Role of Government and Private Sector in PPP Projects :

The role of Government is to act as facilitator and enabler by assuming social, environmental and political risks. The role of private sector partner is to act as financier, builder and operator of the service or facility and it typically assumes construction and commercial risk.

The accountability of the government is for service quality, price certainty and cost- effectiveness (value for money) of the partnership. The PPP process involves a full scale risk appraisal since the private sector assumes the risk of non-performance of assets and realizes its returns if the assets perform. PPPs deliver efficiency gains and enhanced impact of the investments. They lead to faster implementation, reduced lifecycle costs and optimal risk allocation. PPP does not involve outright sale of a public service or facility to the private sector.

PPP'S IN INDIA :

There is now over 10 years experience in India in the development and use of PPPs for delivering infrastructure services. Policies in favor of attracting private participation have met with varying degrees of success, but real progress has been made in some sectors, first in telecommunications, and now in ports and roads, and with individual projects in other sectors. There has been considerable innovation with different structures now being developed to attract private participation. But at the same time progress has been uneven: there are islands of progress, with some states having undertaken far more PPPs than others, and a much heavier use of PPPs in some sectors than others. And while there are a number of successful projects to the present date, there have also been a number of poorly conceptualized PPPs brought to the market that stood little chance of reaching financial closure. In terms of frameworks for PPPs, some states have made more attempts to develop this, including cross-cutting legislation and the development of cross-sectoral units that play a role in the identification and preparation of PPPs. Others however have worked within the bounds of their existing organizational structure. In the surveyed states and central agencies, there have been at least 86 PPP projects in our main sectors of focus where a contract has been awarded and projects are underway – in the sense that they are either operational, have reached construction stage, or at least construction/implementation is imminent. Over 70% of these are in the roads sector. The other transport sectors have seen much fewer projects, with 8 ports (4 major and 4 minor ports), 2 airport and 2 rail projects underway. In the urban infrastructure sector, 11 PPP projects have been awarded, with 8 solid waste management, 2 water and sanitation and one bus terminal projects. Outside of the sectors of immediate interest and hence not included in the main text totals and charts, the survey found 6 PPP projects in e-governance and 2 in education. Though the coverage may not have been exhaustive for these last two sectors, it is clear that the potential use of PPPs in e-governance and health and education sectors remains largely untapped across India as a whole.

Generic Issues and Options:

During the recent years, there is improvements in physical infrastructure development in the country but significant gap exists between demand and supply of critical infrastructure facilities, which has become a binding constraint on the rapid pace of economic progress. By looking at the progress of infrastructure development so far, private participation and PPP arrangements in the development of public infrastructure have still faced several implementation challenges which typically includes tariff setting and adjustment, regulatory independence or dispute over contractual provision and risk sharing. The PPP model will not be feasible in all types of infrastructure but they are possible in many areas, which are to be exploited fully. The key to making PPP model acceptable is to create an environment where PPPs are seen to be a way of attracting private money into public projects, not putting public resources into private projects.In order to make the PPP model as a success storey in the infrastructure development following are the generic issues to be taken:

Transparency: It is crucial in the case of PPP projects. At present, the process of executing the projects in India involves various stages and each stage is to pass through complicated policies and programmes. Though, the process of bidding and awarding the contract is stated to be much transparent, still there is scope for improvements. The PPPs can sometimes run into controversy if the private partner is seen to have received unduly favourable treatment. This can be overcome by ensuring that the terms of concession agreements are transparent and protective of public interest. Though this approach has been adopted by the Centre through model concession agreement, the State governments should also adopt transparent approach similarly to ensure that the PPP will be a success story.

Risk Allocation: As the projects in the infrastructure sector requires huge investments and involve much time frame for their execution, various risks, *viz.,* construction risk, financial risk, market risk, performance risk, demand risk and residual value risk are to be allocated appropriately among the constituents. The risks should not be passed on to others as and when arise, which would affect the cost and progress of the project and create unnecessary litigations. Too many risks assumed by Government will likely put unjustified pressures on taxpayers. On the other hand, too few will prevent potential private investors from participating in the venture.

Project Appraisal: Execution of infrastructure projects should have a clear choice about its implementation whether by the Government or private or both under PPP. Also, the technicality of the project should be clear regarding its soundness, viability and return. When we look at the PPP programme, while there are a number of successful projects, there have also been a number of poorly conceptualised PPPs brought to the market that stood little chance of reaching financial closure. Clear appraisal of the project before its execution would avoid many litigations. At the same time, it is important to avoid a possible bias in favour of the private sector.

Cost and Time Overruns: Many of the projects under the PPP are delayed due to litigations, which lead to cost and time overruns in their implementation.

Government Guarantee: Generally, investors look for Government guarantee for their investments and their return before entering into a venture. Constant changes in the procedures for offering Government guarantees discourage the investment opportunities. Though, Government guarantee for private investment is not a preferred option in the fiscal angle, transparent policies and guidelines towards Government guarantee will provide clear perception and encouragement towards the PPP even in the risky areas of investment. But at the same time, the guarantee should not put the Government into pecuniary losses due to lack of clarity as in the case of Dabhol power.

Centre-State Disagreement: Execution of some of the projects like airport development, road, *etc.,* are delayed due to disagreement between the Centre and the State Governments in various aspects, particularly locational choice, cost sharing structure, political disagreement, *etc.,* which are to be avoided with appropriate policies, political will, cooperation, coordination, dedication and determination.

Regulatory Independence: In the infrastructure sector, regulatory bodies like Telecom Regulatory Authority of India, Central Electricity Regulatory Commission, State Electricity Regulatory Commissions, Tariff Authority of Major Ports, National Highway Authority of India and Airport Authority of India have established as autonomous agencies to regulate the activities coming under their jurisdiction. Though regulatory independence is vital for speedy implementation of policies, there are instances of disagreements between the regulatory authorities. To reduce the risk of arbitrary and ad-hoc policy interventions due to disagreement between the authorities, principles on key issues need to be specified upfront in sufficient detail.

Corporate Governance: Good corporate governance will succeed in attracting a better deal of public interest because of its apparent importance for the economic health of corporates and society in general. The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters. The corporate governance practices of the parties involving in the PPP have to match with the benchmarking corporate governance practices with the best in the rest of the world.

In addition, appropriate institutional framework is a prerequisite for the success of the PPP in the infrastructure development due to its size, investment requirements, structure and dimension. Foreign investment will freely flow into a country when there is sound, stable and predictable investment policy. Frequent changes in the policies will be an irritant to the investors, which is to be restricted in an emerging economy like India. Overall, in addition to sector-specific issues, the generic issues also need the attention of all concerned to make not only the PPP model a successful but also to attract more private participation to upgrade the Indian infrastructure into a world-class.

Performance of PPP In India :

The status of the PPP in the infrastructure development in India, both in the Central Government schemes as well as State sponsored schemes, is not encouraging. Stable macroeconomic framework, sound regulatory structure, investor friendly policies, sustainable project revenues, transparency and consistency of policies, effective regulation and liberalisation of labour laws, and good corporate governance are the basic requirements, which define the success of the PPP model. The PPP model in the road sector has experienced with enthusiastic response with the introduction of massive NHDP with structured MCA. However, many of the road projects are faced with cost and time overruns on account of prolonging disputes in land acquisition, hurdles in the material movements, law and order problems, etc. Power shortage is a serious concern and the quality of the power supply is generally poor, especially in rural and semi-urban areas, which has affected the micro and small enterprises severely. Further, private sector participation in power generation is not forthcoming due to specific issues such as delays in finalising power purchase agreements, high aggregated technical and commercial losses, age-old transmission networks, shortage of fuel supply and policy and procedural barriers while exploring renewable energy sources.

The progress in the development of many of the port projects under private participation is at a sluggish pace, which requires conducive policy environment. Efficiency in cargo handling needs to be enhanced through modernisation of port facilities to facilitate the trade. The PPP model projects in the airport sector are in slow progress and also restricted to major airports. Modernisation of airports like Chennai and Kolkata is yet to take-off due to procedural hassles and land acquisition problems. This brings to the fore a need for constructive and stable policy environment towards land acquisition for public utilities. The urban infrastructure bottlenecks need to be addressed through a development strategy, which encompasses efficient planning and organisation of the project, balancing the public-private interest, reinvigoration of electricity, water supply and transportation system and integration of finance and technology.

International experience suggests that the success of PPP projects requires a single objective of better services for the public at a reasonable cost. This is achievable through realistic and reasonable risk transfer while addressing the public concerns. The Indian PPP model should adhere to such objectives and best practices to march forward on the success path. In this pursuit, easy availability of long-term private capital is an essential requirement. Fostering the greenfield investments in the public infrastructure with appropriate user charges, transparent revenue and risk sharing agreements would transform the international capital inflows into productive ventures. Above all, selection of right PPP model for a right project at a right time through realistic planning would go a long way in providing meaningful and hassle free infrastructure development, which ultimately would increase the infrastructure standards and thereby sustain the overall macroeconomic developments of the country.

Conclusion & Suggestions :

According to the Government of India, investments of around 320 billion U.S. dollars (USD) are expected in the infrastructure sector as part of the Tenth Five-Year Plan (2006-2011) to meet this growth. The creation of world class infrastructure would require large investments in addressing the deficit in quality and quantity. Therefore, it is necessary to explore the scope for plugging this deficit through Public Private Partnerships (PPPs) in all areas of infrastructure like roads, ports, energy, etc. Recently, legal and regulatory changes have been made to enable PPPs in the infrastructure sector, across power, transport, and urban infrastructure.In order to meet the needs of the stakeholders, Competitive dialogue process detailed discussions must be held with pre-qualified bidders to identify solutions prior to seeking final offers from bidders. Such discussions at an early stage lead to maintenance of accountability and transparency, contestability of solutions, clarity of roles and responsibilities, and pragmatic optimal risk allocation.

Flexibility and evolving needs during the lifecycle of the project Typically, the differences in risks and economic consequences during building, stabilization, and completion are not understood, underestimated, and disregarded. To have a fair, transparent and successful PPP, these three stages can be seen as different elements within a project leading to the independent assessment of risks and returns, mitigation strategies, etc. This will help identify the roles and responsibilities of private players, their consortium members, and their public counterparts. Protection against factors beyond the control of the private player The feasibility and economic gains of a project would be dependent on several controllable and uncontrollable factors. It is critical to identify both sets of factors and shield private players against factors beyond their control. For instance, in the electricity distribution business, elements such as subsidy and category-wise tariff substantially affect the project's cash flows and financial risks. These are not regulated by the contract between the public and private parties, but would be controlled by the government or regulator. Risk allocation in the context of long term consequences During the competitive tendering and negotiation process, bidders may accept risks simply to stay in the game, without adequate consideration on either side as to the sustainability of the position. In other situations, political commitments and timetables have apparently left public authorities with no choice but to assume risks, which the private sector could more suitably bear. . Identification of termination and extension mechanism at the outset The principles for the termination and extension of the contract should be objectively defined at the outset along with the consequences of the same. A pre-agreed, objectively defined mechanism would assist planning for exit strategies and avoid any potential dispute.

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