

Dear all,

For a long time now many of us have been asking for the unequivocal resolution of the debate around the status of Private Public Partnership Projects (PPPs) vis-a-vis India's Right to Information Act.

Central Information Commission's view on the PPPs:

The Central Information Commission (CIC) had written to the Planning Commission earlier this year giving three recommendations to make PPPs RTI compliant:

- 1) that every PPP proposal including the draft agreement be published for inviting public comments and objections before finalising it;
- 2) that the PPP agreement should include a necessary condition that the Special Purpose Vehicle or any other entity that comes into being as a result of the PPP would be a public authority within the meaning of Section 2(h) of the RTI Act and that all information sought by the citizens about such entities be provided strictly in terms of that Act; or alternately
- 3) the Central Public Information Officer of the Ministry/Department/Public Sector Undertaking which has caused the PPP to come into being to be equally responsible to provide all information regarding the PPP project by securing it from the PPP entity.

This letter is accessible on the CIC's website at: <http://cic.gov.in/IMP-Letters/Letter-To-DyChairman-on-PPP.pdf>

The Planning Commission's response:

To this letter the Dy. Chairperson replied as follows:

- 1) The Planning Commission has referred the matter about coverage of PPPs by the RTI Act to the Department of Legal Affairs (under the Union Law Ministry)
- 2) The Planning Commission does not execute the concession agreements with PPPs but these are done by the concerned Ministries/Departments/Public Sector undertakings. The Planning Commission however has published several Model Concession Agreements (MCAs) for various types of PPPs. If these MCAs are followed by any PPP then any person can obtain certified copies of the concession agreements, maintenance manuals, maintenance programme and maintenance requirements in respect of each project directly from the concessionaire (i.e. the entity actually implementing the PPP).

This reply is accessible on the CIC's website at: <http://cic.gov.in/IMP-Letters/Reply-From-DC-14032011.pdf>

The media recently reported that the Law Ministry has given an opinion that does not favour recognition of PPPs as public authorities under the RTI Act. For the media reports see: <http://www.hindustantimes.com/tabloid-news/newdelhi/PPP-projects-not-in-ambit-of-RTI-says-law-ministry/Article1-722274.aspx>

Grounds for argument in support of recognising PPPs as public authorities:

The National Campaign for People's Right to Information has in a recent [press statement](#) given two sound arguments as to why PPPs must be recognised as public authorities, using the very language that the Government of India has used to describe [PPPs in 2005](#). That document is also accessible at: <http://www.pppinindia.com/pdf/ProAppPPP.pdf>

The crux of NCPRI's argument is two-fold: a) PPPs by the government's own description as a category must be recognised as falling within the definition of the term "State". Several Supreme Court decisions (mentioned in the press release) have laid down the test for an entity to be labelled as an 'authority' under the State. and b) The various concessions and the viability gap funding that a PPP may receive can amount to substantial financing by the appropriate government as understood in Section 2(h) of the RTI Act.

Some of you may already have developed these arguments for demanding openness in relation to PPPs in their own States. However those who may be looking for grounds to seek transparency may use these arguments. Basic information about PPPs is available for various projects on a dedicated website: <http://www.pppindiadatabase.com/> Documents and reports on PPPs are available at: <http://www.pppinindia.com/>

We also need to work in a concerted manner to make PPPs transparent because the volume of projects and the number of sectors into which these entities are entering is increasing day by day.

In order to access the our previous email alerts on RTI and related issues please click on:
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84

You will find the links at the top of this web page. If you do not wish to receive these email alerts please send an email to this address indicating your refusal.

Thanks

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