

Dear all,

Last week you may have read my email alert about the ongoing debate in India as to whether Public Private Partnership (PPPs) projects or entities implementing such projects must be made RTI compliant. The recommendation of the Central Information Commission in this regard and the reply of the Planning Commission were posted. I had also shared a press statement issued by the National Campaign for People's Right to Information describing PPPs as entities falling within the meaning of the term "State" as understood in the Constitution and the term "public authority" as understood in India's Right to Information Act, 2005.

In this email I present before readers another argument for making PPPs compliant with the RTI Act directly. Few of us know that PPPs are subject to audit control (I thank a gentleman friend who is very knowledgeable about government affairs for alerting me in this regard, but he wishes to remain anonymous). The Comptroller and Auditor General of India - the supreme body that carries out audits of government departments and public sector entities has issued [guidelines for auditing PPPs](http://www.icisa.cag.gov.in/Background%20Material/PPP/Public%20Private%20Partnership%20in%20Infrastructure%20Project.pdf) in 2009. The complete text of the guidelines can also be accessed at this link: <http://www.icisa.cag.gov.in/Background%20Material/PPP/Public%20Private%20Partnership%20in%20Infrastructure%20Project.pdf>

PPPs as understood by the C&AG:

PPPs are described in this manner in the C&AG Auditing Guidelines:

"...PPPs are projects jointly undertaken by governments, public sector bodies and entities with private sector partners to provide infrastructure services of the required / improved quality to the public and consumers at large and involves balanced sharing of the risks and benefits. In PPPs, the private sector invariably brings in the necessary finance to build the projects, undertakes designs and construction as also operation and maintenance, in return for the public sector either transferring its right to collect user charges, levies or tolls or pays compensation in accordance with an agreed pattern by way of viability gap funding, annuity or annual charges, based on certain pre-determined norms and principles... There could be different types of PPPs as discussed in paragraph 1.3 below; but they all will have the following ingredients, which may be kept in view:

i) government departments or agencies and bodies and entities under them on the one part and selected private sector parties on the other will enter into valid and legal contracts;

ii) partnership between the two will be to provide long term public services (and/or goods) of required quality;

iii) the public sector will, while transferring the responsibility to design, construct and/or operate the project to the private sector, retain the overall responsibility to provide the public service;

iv) the private sector will bring in the required finance either fully or substantially to complete the project and to operate it, with the public sector providing right to revenue likely guarantees to financiers or viability gap funding / annuity in appropriate cases;

v) the public sector will assign the right to collect revenues arising from the project to the private sector for a defined period based on demand projections, or pay grants or annuity and/ or agree to share any surplus, subject to a balanced sharing of the risks and gains;

vi) value for money will be the basic criterion for the public sector to enter into the arrangement."
[emphasis supplied]

PPPs are not private entities

The C&AG is very clear that PPPs are not the outcomes of any policy of privatisation. At para 1.5.1 of its auditing guidelines it says as follows:

"1.5.1 The main difference between PPP and privatization is that in the former there is no permanent transfer of ownership of the assets to the private partner and moreover, the public sector agency remains accountable for providing services of the required quality. Thus, the responsibility and accountability to deliver the goods and services efficiently remains with the public sector, which is not diluted because of the PPP arrangement. On the other hand, in privatization, not only the ownership is transferred to the private sector, but the accountability is also shifted totally to the purchaser, though the government may set standards and retain price / quality control by establishing appropriate regulatory mechanism, as per the relevant legislation." [emphasis supplied]

C&AG Guidelines cover Audit of PPPs set up by State Governments as well:

According to the C&AG these auditing guidelines apply to PPPs being implemented by the State Governments as well including schools run under this system. It says:

"...Public auditors while auditing the PPP Joint Ventures of the State Governments should treat these guidelines as the best practice where the State Governments have not brought out such guidelines..."

1.9.4 In some States, the management and running of schools have been transferred to private management, by leasing the school buildings and other infrastructure facilities, subject to conditions. The private management may receive annuity payments for the management of the schools. Such public private partnerships are subject to public audit; and the guidelines included in this document could be usefully adopted to test their efficiency and effectiveness." [emphasis supplied]

Transparency and Accountability in PPPs:

According to the C&AG Auditing Guidelines 'transparency' and 'accountability' are crucial for the success of PPPs.

Transparency: *"The key to the success of PPP projects is a balanced and fair sharing of risks and benefits between the partners, and transparency and accountability in all transactions relating to the award and management of the contract."* [from the Preface to the Guidelines]

Accountability: According to para 1.5.1 of the Guidelines (already cited above) the overall responsibility for providing the public service is with the government department or the public sector undertaking that has entered into the PPP agreement with the private sector entity. This is not a case of complete privatisation of the provision of public service. There is a direct responsibility with the government department or PSU for the successful implementation of the PPP project. The C&AG refers to the issue of accountability which is so central to the RTI Act as stated in its preamble. **If the government department or PSU is directly accountable for the success of the PPP project, there is no valid reason why information about the PPP must be withheld from citizens under the RTI Act.**

Given the requirement that every PPP is in the ultimate analysis the responsibility of the government department or the PSU and that every PPP's accounts and performance need to be audited, there is no reason why they cannot be considered as public authorities matching the criterion: *"body ... controlled ...by the appropriate government"* given in Section 2(h)(i) of the RTI Act. **This is another strong ground for treating PPPs as public authorities under the RTI Act, in addition to the grounds mentioned in my previous email alert.**

If they have not done so already, readers may start filing RTI applications seeking copies of audit reports of PPP projects underway in their areas. Let us start making PPPs transparent bit by bit while demanding that they be officially recognised as public authorities under the RTI Act.

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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