Advanced Contacts, Tendering and Public Procurement
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Lecture 44
Public Private Partnerships: Law and Policy in India - Part 01

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This class is to try and understand Public Private Partnership and public private partnership is an interesting aspect of government contracting. It has elements of the rules that apply to government contracts. And it has those elements that have the freedom of a private contract as well.

To notice PPP model is considered to be one of the successful models in government infrastructure and citizen-centric projects. The success of PPP in this country is in several sectors, be it the highway sector, the airport or the port. Some of the PPP principles established for public private special purpose that kind of a model has now been taken to the railways, it has also been introduced in the different sector in some manner.

The government finds this model to be a win-win situation both for the government as well as for the citizens who would require certain facilities, especially in terms of what kind of critical infrastructure. So the public private partnership model is also important in sectors like electricity, where the first kind of process of privatization of public services was scripted.

Some efforts of bringing the public private partnership in the water sector has also been initiated. But it is not being that successful though. Because water is a very emotional, politically charged issue and hence, there has been a different model, kind of what we see as the EPC model that has been adopted. The Ministry of Jal Shakti, under the National Jal Jeevan Mission is trying to actually bring water connection to every household by 2024. There should be tap water for every household, ensuring at least 55 liters of water. Instead of going by the public private partnership model, the Ministry of Jal Shakti under the National Jal Jeevan Mission is adopting something very similar to the public private partnership, but under what called as the EPC model.

So, even in the water sector, this has been adapted. So, broadly, even if you do not consider the PPP partnership in all sectors, the principles of involving the private player in government contracting is something that has been emphasized in India. And we know that the highway sector has always been the champion of the PPP project. It has experimented PPP quite elaborately. It came up with several models.

Today, currently notice that there is a HAM model called the Hybrid Annuity Model, which is adopted in the highway sector because unfortunately, when initially the highway sector, PPP was introduced, it did not, be profitable for the contractors. And then the highway authority that is the National Highway Authority of India, which was building the golden quadrilateral, connecting the different metropolitan cities of this country, came up with another interesting idea to actually make this project viable and feasible for the private contractors by coming up with what was known as the Viability Gap Fund.

Now, the Viability Gap Fund is an interesting kind of bridge, so as to compensate the contractor for the kind of investment and work he had already committed, but which could not be written back due to toll collections. And the contractors felt that they were running out of funds and money and projects were not going to be viable. So, the Highway Authority had to actually had to pitch in with the Viability Gap Funds to actually compensate these contractors as well.

And later on why there was the HAM model is that to have the PPP, along with the EPC. So, I will talk about this EPC model and why the HAM model was introduced. It is kind of a hybrid model. It is not pure PPP; it is not pure EPC. It is something in between of the same. And that is something that the highway sector has been adopting quite well.

The public private partnership project has been very, very successful in the airport sector. Let us take some examples of the same. So, sector wise, the public private partnership has been a great initiative. It is actually a great public contracting study. If some of you are interested on how this contract is made, I think you could always read our book that was published.

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This is called the NLSIU book series number 5. And the title of the book is public private partnership in India - A Sectoral Analysis. This is an edited book, it has quite a bit of information on public private partnership, and the critical issues and challenges in which courts have intervened and given direction about how the government should go ahead with the public private initiative. And this book also discusses the central and the state legislative framework for the public private partnership sector to be brought into place.

So, this book is something that one can keep as a ready reference to understand, detail study about the modalities of public private partnership project in this country. Also, notice that there are several ministries that have come up with the model agreements on public private partnership. These are available for study. And the model agreements, even the NITI Ayog has come up with a model agreement, which can be adopted by agencies that would want to actually go in for a public private partnership model, especially the state governments if they want to put their infrastructure projects on the PPP model.

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Moving forward understand the history and development of public private partnerships in this country. Now, the traditional form of contracting the government has been always outsourcing. What is an outsourcing contract? For instance, or an example.

If the government or the Public Works Department of the government wanted to lay down a road, they would actually call for a tender in which the bidders would participate and the lowest bidder who will actually lay down the road for the lowest price or cost would be given the contract to actually lay up the road. So, the government always relied on private contractors, vendors and private companies to do a lot of the infrastructure development in this country. And this has been going on and this is probably the way in which the government gets citizen-centric services, citizen-centric infrastructure or schemes.

So, that, to be honest, one Supreme Court judgment very clearly said, the right to do business with the government is actually a fundamental right. It is part of Article 19 where SC talks about the freedom of trade, occupation or business, but it also means that under Article 14 to about right to equality, it means every Indian citizen has an equal opportunity or should be given an equal opportunity to do business with the government.

And hence the government, whenever it wants to go by such kinds of tenders, or wherever it wants to give for private participation of its work, it should go by a tender advertisement, it should go by a public advertisement, giving a fair and equal opportunity to anyone who may probably qualify for making such kinds of work or executing such kinds of work or supplying such kinds of goods that the government is in need or in requirement of.

So, that was a traditional model,. And we know that in India, while we talk about the law of tenders, we mostly rely on the legislative executive rules, regulations and guidelines. But also we rely on Supreme Court and High Court judgments in which the courts have given directions about how this tender has to be managed and taken forward.

Coming to the kind of change that occurred. And change occurs because of the economic reform in the year 1991. The liberalization of the economy and the privatization and brought in globalization to have a global perspective. So, opening up our economy, said foreign direct investment can come in, foreign companies can do business in this country. So, that was the aspect of globalization.

Liberalization is very, very important. The government has to have an outlook that it may not be a businessman. It may not be running trains and buses and aero planes. It will not produce goods and services, it better do governance. The liberalization of thought and governance was very critical. And what is important is that the liberalization of policies in terms of finance, in terms of budget, in terms of trying to make citizens' lives much better in this country.

Encouraged privatization of not only private businessmen who are already doing business, but also to encourage foreign investment and privatization. But privatization, actually, in the context, meant that whatever government had, you could think of privatization. It could be of companies that were already government, it could be handed over to private. It could be a small disinvestment of these government companies where private shareholding can be permitted. It could be privatization in terms of private management.

And hence, privatization has been very key post 1991. And the attempt to privatization has been a bumpy ride in India, unfortunately. Since privatization is a unique opportunity, it is an opportunity where private players are given lot of business opportunity. For example, the privatization of coal, extraction of coal mining had a monopoly by Coal India Limited and then we allowed private players to actually mine the coal. It is good because government companies cannot solely provide the kind of critical natural resources that the country needs, because coal is important for electricity and thermal power generation.

But the idea was that privatization has great opportunities and the government was opening up the economy for private players to actually do business. Because at one point of time, there was what we say nationalization or a socialization or social theory, or socialism that was adopted by the government. And that is where the government was unfortunately, running its own airline, without any private player competing for the same. And the government was actually producing LPG, it was running busses and trains.

So, the socialism model of development had to change. And if socialism had to change, we had to adopt a little bit of capitalism, allowing private players to actually capitalize from the economy, make profits from the economy, getting to extraction of resources and provide services to citizens. And that kind of an opportunity was supposed to be provided post 1991. Interestingly, privatization, whether it is good, has to be evaluated. In certain sectors, privatization is inevitable.

But in certain sectors, whether it would be better to have a public private participation, because privatization has its own risks, it has its own challenges. And in a country, which was under transition or getting into a transition model from socialism to capitalism, from a very closed economy to a liberal economy, there is lot of contractual matters and issues and challenges that may arise from pure privatization.

The classic case or the two cases that were very critical in the 1990s post LPG era in this country. The two cases were: the ENRON of the Dabhol Power Corporation case and the second was the Bangalore-Mysore Infrastructure Corridor case. In one case, the ENRON case, it was the Government of Maharashtra and in the Bangalore-Mysore Express Corridor case, it was the Government of Karnataka, both who were contracting parties and for the first time, these two states were getting into contractual litigation issues and challenges with private companies.

ENRON happened to be a U.S. company. The NICE road happened to be a consortium of Indian and U.S. companies. It was a joint venture. And when privatization was attempted, in ENRON case it was electricity or power generation, that was attempted. In the Karnataka case, it was the road infrastructure that was attempted to be privatized. In both these two cases, the two governments faulted in their contractual obligation.

There was lack of planning, there was lack of negotiation, there was lack of drafting, there was lack of legal acumen in executing these two contracts, and hence they ran into deep trouble. Interestingly, the ENRON case at least, was resolved through amicable settlement. And it was created as, Maharashtra State Electricity Board was given stake in the Dabhol Power Corporation and to some extent, after a hard fought legal battle this matter was resolved and the Dabhol Power Corporation started producing electricity and it was sold.

But it took 10 years for it to be resolved. But what happened in the ENRON case was ENRON itself collapsed in the United States. It was a Multinational Power Company and because ENRON collapsed, it was easy to resolve and find solutions for making the work, making the project operational and working.

However, coming to the Bangalore-Mysore Infrastructure Corridor case, this case is still not resolved. The road has not reached Mysore. This was an interesting project that was designed and conceived by a consortium company called NICE, that is Nandi Infrastructure Corridor Enterprise. It was headed by Ashok Kheny, who was the Managing Director of this project. He had experience in critical road projects in the United States. He thought he could build a similar highway between Bangalore and Mysore. It was supposed to be an express corridor, which means there would not be any passages in between or stops in between or red light in between. And it was 111 kilometers project that was conceived at that point of time.

Interestingly, when the government of Karnataka entered into an MoU with NICE, the expectation of NICE was not only going to build road, it also wanted to build actually 7 townships which was later reduced and brought down to 5 townships. And the idea of was to have some of Bangalore's population move to these townships through the road network connectivity. They could keep the IT corridor of Bangalore and they could keep the tourism corridor Mysore into one Express Highway.

So, it was quite a well-designed project. But unfortunately, the way the contracts were executed, the MoU was executed, the way the land acquisition process was actually commenced or started off with. Interestingly, what happened with the NICE case was the government of Karnataka through its agency called KIADB, the Karnataka Industrial Development Corporation, they acquired land for this project. And of course, you will notice that in privatization, the land acquisition cost is usually borne by the private player because the government unfortunately does not have resources to acquire that particular that.

And once the land was acquired for NICE, the Karnataka Industrial Development Board, transferred that land to NICE and NICE built the road. And this was in three stages, three phases. First was the peripheral ring road, then was a 40 kilometers road and then the last phase was to reach the road to Mysore. And in between, there was township. So, there were phased construction of this project.

Interestingly, if the phased construction of this project was so badly done in terms of the contract, because naturally, the contract was one sided. It can be clearly assumed by reviewing the contracts that the contracts were drafted by the legal team of NICE and the Government of Karnataka officers did not properly negotiate, lead, review and understand the implications of the contract. And they were probably abused, misused in terms of the contractual power that NICE had and the Government of Karnataka probably signed on dotted lines.

And that is why the government of that day when it was signed 1995, it was the J. H. Patel government. Sri Deve Gowda ji also felt that this was not a boot project, it was a loot project. And interestingly, very recently, there was a defamation suit that was filed by Ashok Kheny on Deve Gowda ji. And a court in Bangalore, very recently, awarded 2 crore rupees as defamation cost to Ashok Kheny by Mr. Deve Gowda because it led to a political slugfest. The politicians of the day felt cheated, they felt that they were taken for a ride, because the contract was not fair.

It was supposed to be a PPP project, but it was actually not. Because in NICE, the government did not have any equity. So, the government really found this to be a problematic contract, problematic situation, they found the citizens interest and public interest to be compromised and hence, the government stopped acquiring land for this project.

Now, notice that in any critical infrastructure project unless there is land, as only the power of land acquisition is with the state, the power of land acquisition cannot be transferred to a private player. So, unless you acquire land and the government hands over this land to the private player, the private player cannot build the infrastructure for any purposes.

And right now, because the ownership of land is with NICE, they are collecting the toll and interestingly, the toll money also is with the NICE company. So, the NICE project and the ENRON project where critical history and historical lessons about how we should have actually planned PPP sector in this country. What kind of preparation, what kind of planning, what kind of policy, what kind of negotiation should have been done before such big infrastructure projects will be granted, either by the Government of Maharashtra or by the Government of Karnataka, I think that was very clearly highlighted in these two cases?

These were lessons that were learned, unfortunately, the hard way, about saying that once involved with private players or private companies, there are going to be challenges of contract, there are going to be called challenges of unfair terms and conditions, there would be some mischief because naturally that in contract, every party seeks to profit or maximizes profit to the extent that he wants the contract to be favorable to his side.

So, the government also ought to be prepared and the private player ought to be prepared. Fair and equitableness of decision making is very, very important. If not, it will land up in such kinds of disputes like the NICE case has already landed up in. Despite it being more than 25 years of this project having been designed. Initially, it was offered to the Asian Development Bank to fund them, that was private funding that was actually brought about, the design of the project was very good, because it wanted to take away Bangalore's congestion, it wanted to decongest this city by an external ring road and then take the traffic away to Mysore.

So, while the design was great but the planning also was great, Unfortunately, it was not negotiated properly or effectively, because the Government of Karnataka probably did not employ the best minds to negotiate. And it was drafted very poorly. And finally, it was executed miserably. And the execution part is where the critical issue comes into place. Because, once there is a convert in the land ownership to a private company, the private company becomes completely and substantially the owner of that particular land.

And in no sense, one can actually come into a public private partnership mode, it becomes a private mode and not a public private mode. So, public private partnership has to be understood from the sense of the partnership where trust and confidence, in partnership between the partners, there ought to be fiduciary relationship. And it should be such that both the partners profit benefit, but at the same time, not to breach public interest or public policies. And that is very important to establish, grow and employ the PPP model in this country.

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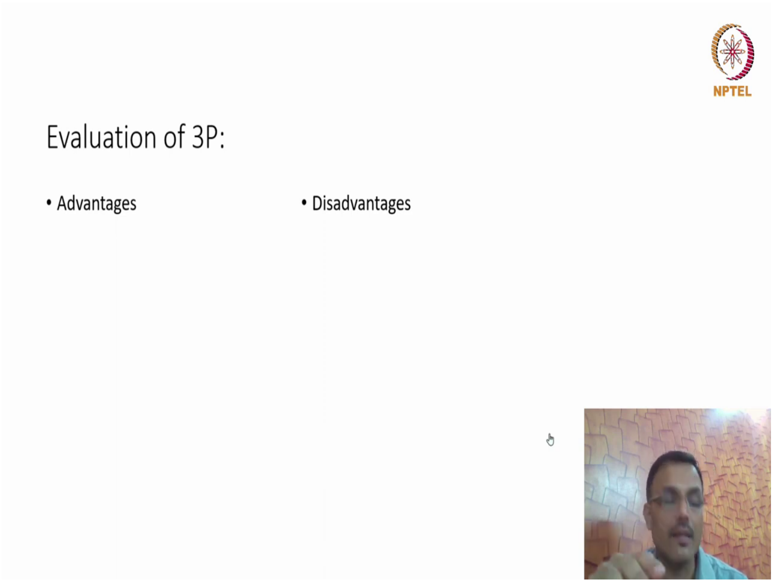

Let's now move on to understanding or evaluating the 3Ps that is public private partnership. And let us try and evaluate the advantages and the disadvantages. Now, why there is necessity to evaluating the 3Ps is because we are trying to understand whether it is beneficial to the government and the citizen or whether it has certain risks to public infrastructure projects.

And the point is, if the risks are lower than the advantages, then there is always a need to go forward with the 3Ps. But if the risks are higher than the advantages, then we need to pause, rethink, revise, review, the public private partnership contracts. Now in terms of advantages, notice that the 3Ps pose quite a few advantages.

And that is why they have been very popular in the last 25 years, not only in India, but in different other countries where this has been obtained, in most cases of say, highways, the ports, telecommunication, airports So, these are the focus sectors in which actually the public private partnerships have been initiated. But most importantly, that it has not only limited to these traditional sectors, it has moved on to even sectors like waste management.

That most of the municipalities are actually trying to move the idea of public private partnership in electronic waste management, in construction and demolition, waste management, in municipal solid waste management and waste to energy, waste to profit, kind of business has now been promoted, thanks to privatization or private investment.

To talk about public private partnership, it is not only about the money or the economic or financial advantage that we are speaking about, it is also about innovation, it is about ideas, it is about business opportunities, it is about finding solutions to the existing problems that the nation and the country faces.

So to talk of waste management, nobody will have an objection about public private partnership, because it is a huge problem. And the problem needs to be resolved and only the private sector can actually come up and resolve that kind of a problem. So, first thing first, what happens with 3Ps is the private sector is able to finance or raise the money (budget) that is required to complete the project. This is one of the distinct advantages because in government, we always see that this money is a huge problem.

Not that the government does not have money, but the problem is about allocation of those resources for these kinds of sectors, because most of the resources are taken in welfare schemes in terms of trying to look at poverty alleviation and it is probably spent on defense, education. So, these sectors receive less finance, less attention in terms of budgetary grants.

And hence with the 3Ps, one of the distinct advantages is to actually invite the private player who is actually financially healthy or who is capable of raising the finance to actually establish complete and successfully run the project. So, finance is actually one of the main reasons why public private partnership is actually undertaken. Because the government cannot probably find its own source of money, it does not want to probably pay upfront to the contractor to complete the work, and he wants a contractor to bring in the kind of investment. And how do to get the returns to the contract or investment, probably give it through the toll money in the highway sector, through the use of development fee in the airport sector, so on and so forth.

So, finally the private sector is going to get the return on his financial investment, it could be in the range of 15 to 26 percent, that is the rate of interest that he is expecting or even more than that. So, the private finance has certain places to invest those finance, it has those places to get written from the finance as well. Apart from say creating avenues of investments, in land or property, real estate, shares and stocks, this is a great avenue for public finance, to be tying up with private finance, allocating private finance in interesting sector to actually invest, take advantage of the sector because in India, friends, please note because of growing population, because of the growing economy, there is a great demand for these kinds of services.

There are a lot of uses, like for example, in airports, there is a lot of generation of revenue from the use of the airports as well. So, private sector finance is one of the distinct advantages why a public private partnership is usually preferred. Second, about efficiency. when public sector undertakings or government departments and ministries operate any kind of infrastructure project or any kind of citizen centric services, efficiency is the greatest challenge.

In India, there are numerous sectors. Now, interestingly, to look at the electricity sector today, most state governments have actually looked at private participation of companies in the electricity sector, which has seen a very, very measurable, kind of a very high efficiency level of power distribution and power generation. Efficiency increases citizen and consumer experience, efficiency brings in efficient use of resources. For example, court for that matter, or any other resources that actually adds to sustainability and environmental consciousness. Efficiency of the resource utilization, not only resource extraction, and it is also efficiency in terms of finally, delivery of consumer or citizen services.

I think efficiency is something that one can see very clearly in many of the sectors which has turned into PPP. They look very fancy, they look very upmarket, they look modern to enjoy the services. And today, the consumer does not hesitate to pay when the services are very good. And that is something where the government very soon realized that that is was a critical part, when private management of these sectors take place, the management efficiency actually improves citizen and consumer centric approaches.

The third distinct advantage is about employment or labor. Now, when these sectors are employed by the government, they have huge problem about how one can actually employ labor, that is a recruitment condition, government employment cannot be hire and fire. There are many protections that government employees have. You have to follow a tender process, you have to go by a public recruitment process, there is a pension bill. So, the cost of labor adds up to the government’s difficulty in actually managing these sectors.

Now, one of the advantages of PPP is that the labor is not working for the government, they work for this kind of special purpose vehicle that is created under the public private partnership. It is not public employment; it is not government employment. And these workers actually work much better. But still, they are not government employees, they are private employees.

And hence, that solves a major labor market issue for the government, because then, they do not have to look at hire, they do not have to look at recruitment, they do not have to look at pension, they do not have to look at department inquiries. This is a distinct advantage and the government actually replaces government employees with private ones in the PPP sector.

And labor costs is a huge cost that makes the PP Project far more viable, because that is an input cost. That is a kind of a cost that goes into the project. And if labor cost is pretty high, the project is not going to be feasible and the returns on investment is going to be delayed to that extent.

The fourth advantage at this point of time is, one will have to realize that the government manages this project, then looking at government procurement, the government has to implement or execute the project and the procurement rules have to be followed. And in the PPP sector, that is something that you do not have to do. So, they can go for the best product, they can actually subscribe to branded products, they can actually get the best experiences, the best material the best technology and they do not have to go under the carpet of a government tender. This clearly creates a huge advantage to public private partnership project, and they can focus on saving time and cost which usually and unfortunately get spent in the tender format as well.

This is where the advantages are. Talking about the advantages is that because there is public in the private, please note, the public private partnership, the public part always will ensure transparency and accountability. So, there is public investment to some extent, it is not real finance, but it is, say, conversion of the land value into the equity. But because the public is there, transparency can be ensured to some extent, accountability can also be ensured.

And hence, it is not complete privatization, because the public is participating in the private kind of business. From the public side, accountability, transparency, fairness of process procedures, can be ensured. Ensuring the citizens' rights are not adversely infringed by the private player and can also be controlled in such a unique partnership that the government has with the private sector. Yes, some of the critical issues is, who can the government partner with? Of course, it is to have a transparent mode of the kind of a partnership, who you want to choose to be a partner.

Of course, a private company cannot be a foreign company, because that is a jurisdictional issue, there is a liability issue. And hence, whenever the government chooses its private player, it has to critically look at security, it has to look at strategic and defense interests, before it actually ties up with any private player in that context. Also, when we look at public private partnership models, there is always this issue about how you can balance the private interest as well.

Now, why private interest has to be balanced is a simply for the simple reason is that private player is there for some kind of return on investment. So, it is the duty of the public, that is the government to ensure that the private player's interests are also protected. Thereby giving him a decent return on investment and also protecting his investors and the relationship as well. So, that will be a very increased kind of advantageous experience in the public private partnership mode.

Finally, to talk about the public private partnership mode in the last 25 years, they have created a numerous levels of contractors who have already tied up with the government. They have a great reputation; they have a great advantage having tied up with different government status center. This is a whole list of new companies that have come into existence, just in the infrastructure and the civil construction space. So, there is a different sector that has been created.

And there is intense competition that can be introduced. Fair competition can also be addressed, so that the government also gets distinct advantages from the bidding process in the public private partnership process. Now, coming to the disadvantages, though the disadvantages are not as many as the advantages, as in any kind of projects that are risks. And the risks can be legal risk, they can be political risks, they can be economical risk.

Now, to look at the legal risk, the legal risk is that most of the PPP or the 3P kind of projects are a contractual project. It is signed through a concession agreement. Now the concession agreement, if it is fair, if it is kind of mutual to both the parties. The concession agreement can be a great agreement in which the project can actually come into existence. However, despite having the best of the contracts, the legal challenges, look, it is a joint venture, public private partnership, public and private, it is a joint venture.

Now, within the private also, there will be two or three parties who will actually create that kind of a consortium or a joint venture itself. Now, between the joint venture partners who are completely private in the 3Ps, there can be disputes, there can be differences. One of the joint venture partners can go insolvent, one of the joint venture partners may want to sell his stake to someone who is not cooperative, someone who cannot align with the existing partners.

So, within the private joint venture interest, there is a legal risk of many things falling apart, because the PPP contracts are long term contracts. They are 20 years, 30 years, 60 years right now, with Adani airports being handed over in Ahmedabad and Mangalore, notice it is a 60-year contract, it is a long term contract. Luckily, with the Adani's there is no private joint venture. In the initial phases, there were GBK, Zurich Airport, L&T coming together.

So, that could be those kinds of challenges and legal risks that could come through the contract that they have entered into. And contractual issues can also lead to arbitration and litigation. Second, the political risk is always about the fact that, in the NICE case, just to give an example of an instance, it was one government that actually entered into the MoU at that point of time, it was later on another government that was actually supposed to have executed the contract.

Now the political parties have huge differences. They are not consistent with the contract, they are not consistent with projects, they take it as an emotional egoistic and political debatable issue and change the priorities. And at that point of time, many of the contractors are felt, have felt neglected, they have felt kind of an experience where they were not able to complete the projects.

So, the political risk is that political party's inconsistency with their likes or dislikes of a project, with the likes of contractors or not, because we know that the contract and the politicians have been in a relationship of a give and take sometimes. It is not necessarily in terms of corruption, because there is political funding. And political parties know who the funder is, and they are probably aligning themselves to those kinds of contractors and funding's in many cases. So, that is a political risk that can definitely be evaluated in the 3Ps.

The economic risk is when the private person actually enters, he brings in the finance, he completes the project. Please note, like I said, in the National Highway sector, the toll collections did not give enough returns to the private party. And that is why then we had to come up with the Viability Gap Fund, we had to come with a hybrid model, we knew that the contractors' money is something that is not, something that they were able to take adequate return off.

And we saw in the early stages, some of the contractors actually got liquidated. They were not able to withstand the pressure of these projects and the money that was required. The banks and the financial institutions also did not support adequately in terms of loan or credit lines. And some of the contractors had to actually exit from that kind of a business. So, that is a huge economic risk. Because by certain calculations, if the traffic will increase in the next 5 years or 10 years, it will double or triple. Based on those calculations, contractors actually negotiate the concession tenure.

Concession tenure, can be 20, 30 or 60 years. How to decide this tenure?? I think we decide this tenure by considering that look, during this time, this is the kind of returns that is expected, it is a projection, it is a kind of an anticipation. Once the toll road opens, maybe people will take the village roads, because they do not like paying toll, there could be alternate routes that can be established. In many cases where the central government has laid down the highway, the state government comes up with a parallel highway for its own citizens, that is a free road, this is a toll road and hence the toll. So, that again in terms of the kind of anticipation in the long term basis, economic issues could be a major problem.

Second is also on the economic side; you look at return on investment right now with investment say, what is the lending ratio? What is the ratio in terms of reserve bank of India lending rates? So, having taken loan from banks, to return it with the rate of interest is required. But if you do not actually make money at the same rate of interest, or double the rate of interest, return on that kind of loan or credit becomes a lot more difficult.

And then the banks then take action, say under the insolvency and bankruptcy code against these contractors, and probably try and look at insolvency proceedings. That could be a huge economic risk in the PPP sector. So, unless the contractors have additional businesses to withstand, if they are purely into the PPP kind of contracting mode, they can face a lot of issues and challenges as well. Also, one of the issues with 3Ps has always been government interference. This is kind of a pressure situation, because tying up with the government. Government servants and government agencies can also be very, very arbitrary, they can be unfair, sometimes they can be kind of dominating the private business. So, they may not give too much of a free hand to the private players to probably change the model, design changes.

For example, from a 4 lane to a 6 lane, there is a lot of policy paralysis at times, because the government is very slow in giving those kinds of permissions, the government is very slow in acquiring additional land, the government is slow in raising the toll money, because all of these have public interest that is involved. So, then what happens is in any of these sectors, wherever the 3Ps have been established, to bring a regulator in place, bring an autonomous body because you do not want the same government to be a contracting party and also to not to make money. So, let an independent regulator decide what should be the tariff, what should be the toll, so that some kind of expansion, some kind of advantages can be given to the citizen at the user bases to which the private person can also make profits above.

So, those kinds of challenges will continue to remain in the public private initiative. And sure these are something that now almost everyone in the public private partnership basis knows, but that is something that they will definitely be able to withstand, definitely be able to address, and also take due note of.

The biggest disadvantage in public private projects is delay. Now, all contracts impose a penalty for delay. And very often than not this kind of delays can occur due to many circumstances. One of the biggest circumstances 3P projects is that there should be adequate land and the land should have been acquired by the government. If there is delay in handing over the land, that becomes a huge problem for the private investment, the private player, and that literally postpones his return on investment. And that exposes them to a huge risk in case that is done by the government. So, vis-a-vis the government the kind of negative approach, for instances like, protest of land acquisition, or maybe some of the land acquisition cases end up in court, it ends up in litigation, it delays, so it is not necessarily the fault of the government.

It could be the kind of fault of determining the kind of compensation for land acquisition, that may also result in delay. And later on, it may be due to a strike, it may due to procurement things. So, the private player may lose interest due to delay, because that would also lose its time to make revenue from that kind of a project.

So, these are some of the advantages and disadvantages, just to give the kind of an idea of what it requires to us to study the Public private partnership model, because it is important for us to understand the risks that are involved. Obviously, there are many risks. And these risks are something that every businessman is used to. But the risks, when there is actually business with the government, is something that one cannot fight with. And the only remedy then at that point of time is to approach to the court of law, through the writ repetition, approach arbitration and try to resolve the matter and continue good business relationship with the government. That is something that is very, very critical and important.

And that there are lot of protection mechanisms introduced in the concession agreement in the public private partnership mode. This is to avoid any litigation dispute, differences that parties may have from their own project. For example, there is this issue on what is called as the escrow account. Most of the money that is made from the 3Ps project is not suddenly and immediately distributed between the public and the private players. So, it is put in an escrow account, it is actually studied, evaluated, reviewed and audited before it can be distributed between the parties.

So that whatever money has been made been made fairly, it has been made as per the legal and ethical standards that are required to bring this partnership into existence and to progress this partnership forward. And with that only, the escrow account is then used to distribute the money after the election of cost as profits that may be necessary for the parties to actually take due note and advantages of.

To conclude by saying something like this. The public private partnership projects have advantages, they have disadvantages, there are challenges of sales tax, there are challenges of operating costs, there are challenges of say ownership of assets that are built on land. So, whether to allow profit, if so, to what extent this profit should be allowed? Should we rather look at just profits to be taken away, or should the profits be flowed back to bring in innovation, technology, to bring in new experiences and to combine with the public sector to actually deliver better citizen-centric approaches.

It is something that one will have to take due note and consideration of, but remember, friends, no person is coming here for charity, it is not a not for profit kind of project. The PPP projects are completely for profit projects, profit for the public, profit for the private is something that is always attempted in a PPP model. And hence, that is the reason the tolls are revised and the money is actually flowed back into the system as well.

However, notice that despite the numerous advantages, the adoption of 3Ps is very slow in other sectors. For example, in the hospital sectors, this has not seen much of growth, for many reasons, maybe it is about hospitals and the kinds of services that have to be given to the poor and the needy. And so many services in the hospital have to be free.

So, the private sector hospitals may not be ready and willing to tie up with the government. So, the hospital sector has not seen much of the 3Ps growth. And that is quite disappointing because I think healthcare needs private investment, it needs private technology, it needs private participation. And the government must actually do this in such a manner that it can actually favor and show the private individuals have great advantage in the same.

For example, the post COVID-19, it is important it is for private players to tie with the government, especially with the vaccine. And that clearly displays the fact that from now on, I think the government must look at hospital and the medical healthcare sector as a very important sector for the growth of the public private partnership mode.

Also, that public private partnership mode can be a great leverage in terms of public education. Today, the government schools have rotary schools as well, some kind of private initiatives in public education system. But in terms of education, two kinds of public or educational institutions are there. One is completely public; one is completely private. Even university or higher education is either private or public.

It is time at least a public private partnership model, even in the education sector, can be something that can be explored for. It would also have some kind of a huge boost for the education market, which now has seen exponential private growth. And there is a great private investment in education sector, in India as well.

It is important to understand that PPP being a long term contract, there must be enough systems in the contract to actually make the contract a successful one. It is not successful only for the parties, but it is finally successful for the citizen, for the society and for the country because these are infrastructure projects, it has important projects as well.

And hence, it is very natural for the 3P projects to have long term business relationship. And hence, they must have clauses like what we call as the monthly review meeting sometimes or interestingly, what the UK has adopted, especially in the construction industry, it is sort of an arbitration clause, rather, it is not a replacement to arbitration. It is actually supportive or supplementary arbitration. It is called the Dispute Review Board Clause.

It is called the DRB Clause. And the Dispute Review Board Clause is a clause wherein all these minor differences, disputes or even kinds of challenges that cannot be solved by the Board of Directors are referred to the Dispute Review Board from time to time. It is not like one-time escalation of disputes that should result in arbitration or court proceedings.

So, trying to resolve disputes through a DRB from time to time would be a great way of making this proper system to work and a proper system for the public private partnership to be a successful one. Finally, municipalities or urban local bodies must take PPP quite seriously. There is so much lack of infrastructure in our cities.

And the municipalities are very slow in maintaining parks, roads and public transport systems. To know that already certain metros or metro railway networks have been given to private player. It is time that most of these municipalities take a very important lead in enhancing citizen experiences in those cities and they can invite the corporate sector to actually tie up with them for a better municipal governance as well.