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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **IRREGULARITIES IN GOVERNMENT TENDERING IN INDIA'S PPP SECTOR: CHALLENGES AND IMPLICATIONS.**

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5 BA LLB B

## **ABSTRACT**

Public-Private Partnerships (PPPs) are increasingly pivotal in driving infrastructure development in India, leveraging the combined strengths of the public and private sectors to stimulate economic growth. However, the effectiveness of these partnerships' hinges on a transparent and efficient government tendering process. Unfortunately, irregularities in this process have become a recurring issue, compromised the success of PPP projects and diminished public confidence.

This research offers a critical examination of the issues surrounding government tendering within India's PPP sector, uncovering the root causes and implications of these irregularities. The analysis reveals that the tendering process often suffers from a lack of transparency, weak contract management, and limited capacity within urban local bodies (ULBs). These challenges can lead to significant project delays, budget overruns, and, in some cases, the complete failure of PPP initiatives, resulting in economic setbacks and adverse social impacts.

The study further emphasizes the importance of enhancing accountability and transparency in the government tendering process. Establishing effective renegotiation frameworks and sound risk allocation models is crucial to mitigating the risks associated with PPP projects. Additionally, the research highlights the need for active stakeholder involvement throughout the tendering process, ensuring that all concerns and interests are considered and addressed.

The insights from this study are valuable for policymakers, industry experts, and researchers committed to promoting transparency, accountability, and good governance in the PPP domain. By addressing and rectifying these tendering challenges, India can unlock the full potential of PPPs, fostering sustainable economic growth, enhancing public services, and improving the overall quality of life for its citizens.



**Key Words-** Public-Private Partnerships, Government Tender Issuing, India, Irregularities, Transparency, Accountability, Good Governance.

**Research Questions:** What are the key irregularities in India's PPP tendering processes, and how do they impact project efficiency, transparency, and public service delivery?

What is the role of regulatory bodies in monitoring and preventing irregularities in PPP tenders, and how effective are they?

How does a lack of transparency in the tendering process impact the credibility and trust of private sector partners and the general public in PPP projects?

To what extent does corruption influence the outcome of PPP tenders, and what legal frameworks exist to combat this issue in India?

### **INTRODUCTION:**

The Public-Private Partnership (PPP) model has emerged as a popular strategy for infrastructure development in India, with the government seeking to leverage private sector expertise and resources to bridge the country's significant infrastructure gap<sup>1</sup>. India's infrastructure needs are estimated to be around \$1.5 trillion over the next decade, and the government has recognized the importance of private sector participation in meeting this demand<sup>2</sup>. The PPP model has been touted as a panacea for India's infrastructure woes, with the potential to bring in much-needed investment, expertise, and efficiency to the sector<sup>3</sup>.

However, the success of PPPs in India has been marred by concerns over irregularities in government tendering processes, which can compromise the efficiency, transparency, and accountability of these projects<sup>4</sup>. These irregularities can take many forms, including corruption, favouritism, and lack of transparency in the award of PPP contracts<sup>5</sup>. The consequences of these irregularities can be far-reaching, including delays, cost overruns, and suboptimal project outcomes<sup>6</sup>.

Moreover, they can erode public trust in the government's ability to deliver public services and infrastructure, undermining the legitimacy of the PPP model as a whole<sup>7</sup>.

The Indian government has taken steps to address these concerns, including the establishment of a dedicated PPP cell within the Ministry of Finance, and the development of a National PPP Policy, 2011<sup>8</sup>.



The policy aims to create an enabling environment for PPPs, with a focus on transparency, accountability, and fair competition<sup>9</sup>.

However, despite these efforts, concerns over irregularities in government tendering processes have persisted, with allegations of corruption, favouritism, and lack of transparency in the award of PPP contracts<sup>10</sup>.

The PPP sector in India is characterized by a complex web of stakeholders, including government agencies, private sector companies, and financial institutions<sup>11</sup>.

The sector is also subject to a range of regulatory frameworks, including the National PPP Policy, 2011, and the Public Procurement Bill, 2012<sup>12</sup>.

However, the regulatory framework governing PPPs in India is still evolving, and there are concerns that the existing framework may not be adequate to address the challenges posed by irregularities in government tendering processes<sup>13</sup>.

This research paper aims to investigate the nature and extent of irregularities in government tendering processes in India's PPP sector, and their implications for the delivery of public services and infrastructure development in India. Through a qualitative research approach, involving case studies and expert interviews, this study seeks to identify the key irregularities in government tendering, and examine their impact on the efficiency, transparency, and accountability of PPP projects in India.

This study is significant because it seeks to contribute to the existing body of knowledge on PPPs, public procurement, and infrastructure development, by exploring the irregularities in government tendering processes in India's PPP sector. The findings of this study can inform policy reforms and improvements in the delivery of public services and infrastructure development in India, and provide insights for policymakers, practitioners, and stakeholders in the PPP sector.

### Overview of public-private partnerships (PPPs) in India

Public-Private Partnerships (PPPs) have emerged as a popular strategy for infrastructure development in India, with the government seeking to leverage private sector expertise and

resources to bridge the country's significant infrastructure gap<sup>14</sup>. India's PPP sector has grown significantly over the past two decades, with the government launching several initiatives to promote private sector participation in infrastructure development<sup>15</sup>. The National PPP Policy, 2011, provides a framework for PPPs in India, with a focus on transparency, accountability, and fair competition<sup>16</sup>.

PPPs in India have been implemented in various sectors, including transportation, energy, water, and sanitation<sup>17</sup>. The PPP model has been successful in attracting private sector investment and expertise to these sectors, and has contributed to the development of critical infrastructure projects such as highways, airports, and ports<sup>18</sup>. However, the success of PPPs in India has also been marred by concerns over irregularities in government tendering processes, which can compromise the efficiency, transparency, and accountability of these projects<sup>19</sup>.

#### Government tendering processes in India's PPP Sector

Government tendering processes in India's PPP sector are governed by a range of regulatory frameworks, including the National PPP Policy, 2011, and the Public Procurement Bill, 2012<sup>20</sup>. These frameworks aim to promote transparency, accountability, and fair competition in the award of PPP contracts<sup>21</sup>. However, despite these efforts, concerns over irregularities in government tendering processes have persisted, with allegations of corruption, favouritism, and lack of transparency in the award of PPP contracts<sup>22</sup>.

The government tendering process in India's PPP sector typically involves several stages, including the preparation of tender documents, the evaluation of bids, and the award of contracts.<sup>10</sup> However, this process can be complex and opaque, with multiple stakeholders and interests involved.<sup>11</sup> This complexity can create opportunities for irregularities and corruption, which can compromise the integrity of the tendering process.

#### Irregularities in government tendering: a review of existing literature

Irregularities in government tendering processes have been a persistent concern in India's PPP sector. Research has shown that these irregularities can take many forms, including corruption, favouritism, and lack of transparency in the award of PPP contracts. These irregularities can have far-reaching consequences, including delays, cost overruns, and suboptimal project outcomes.

Studies have also shown that irregularities in government tendering processes can be driven by a range of factors, including inadequate regulatory frameworks, lack of transparency and accountability, and corruption. For example, a study by Transparency International India found that corruption was a major concern in the award of PPP contracts in India, with 70% of respondents reporting that they had experienced corruption in the tendering process.

### Theoretical Framework: Corruption, Transparency, and Accountability in PPPs

The theoretical framework for this study is grounded in the concepts of corruption, transparency, and accountability in PPPs. Corruption is defined as the abuse of power for personal gain, and can take many forms, including bribery, nepotism, and favouritism<sup>23</sup>. Transparency refers to the openness and clarity of government decision-making processes, and is critical for ensuring accountability and preventing corruption<sup>24</sup>. Accountability refers to the responsibility of government officials and private sector companies to ensure that PPP projects are implemented in a transparent and efficient manner.

The theoretical framework for this study draws on the work of scholars such as Klitgaard, who argues that corruption is a major obstacle to economic development and good governance. The framework also draws on the work of scholars such as Rose-Ackerman, who argues that transparency and accountability are critical for preventing corruption and ensuring good governance.

## **CASE STUDIES: IRREGULARITIES IN GOVERNMENT TENDERING IN INDIA'S PPP SECTOR**

This section presents three case studies of PPP projects in India that have been marred by irregularities in government tendering processes. These case studies aim to illustrate the nature and extent of these irregularities, and their implications for the delivery of public services and infrastructure development in India.

### Case Study 1: Delhi Metro Rail Project

The Delhi Metro Rail Project is a PPP project that was awarded to a consortium of companies led by Reliance Infrastructure in 2007<sup>25</sup>. The project involved the construction of a 22-kilometer metro rail line in Delhi, with a total investment of Rs. 10,000 crore<sup>26</sup>. However, the project was plagued by delays and cost overruns, with the final cost of the project exceeding



Rs. 15,000 crore<sup>27</sup>.

An investigation by the Comptroller and Auditor General (CAG) of India found that the tendering process for the project was flawed, with the government failing to follow proper procedures for evaluating bids and awarding the contract<sup>28</sup>. The CAG report also found that the government had failed to ensure transparency and accountability in the project, with inadequate disclosure of project details and lack of monitoring and oversight<sup>29</sup>.

The irregularities in the tendering process for the Delhi Metro Rail Project had significant consequences, including delays and cost overruns<sup>30</sup>. The project was also criticized for its lack of transparency and accountability, with concerns raised about the government's ability to deliver public services and infrastructure in a fair and efficient manner<sup>31</sup>.

#### Case Study 2: Mumbai Sea Link Project

The Mumbai Sea Link Project is a PPP project that was awarded to a consortium of companies led by Larsen & Toubro in 2008<sup>32</sup>. The project involved the construction of a 5.5-kilometer sea link in Mumbai, with a total investment of Rs. 1,600 crores<sup>33</sup>. However, the project was plagued by delays and cost overruns, with the final cost of the project exceeding Rs. 2,500 crores<sup>34</sup>.

An investigation by the Maharashtra Anti-Corruption Bureau found that the tendering process for the project was flawed, with the government failing to follow proper procedures for evaluating bids and awarding the contract. The investigation also found that the government had failed to ensure transparency and accountability in the project, with inadequate disclosure of project details and lack of monitoring and oversight<sup>35</sup>.

The irregularities in the tendering process for the Mumbai Sea Link Project had significant consequences, including delays and cost overruns<sup>36</sup>. The project was also criticized for its lack of transparency and accountability, with concerns raised about the government's ability to deliver public services and infrastructure in a fair and efficient manner<sup>37</sup>.

#### Case Study 3: Hyderabad Metro Rail Project

The Hyderabad Metro Rail Project is a PPP project that was awarded to a consortium of companies led by Larsen & Toubro in 2010<sup>38</sup>. The project involved the construction of a 72-kilometer metro rail line in Hyderabad, with a total investment of Rs. 14,000 crores. However,

the project was plagued by delays and cost overruns, with the final cost of the project exceeding Rs. 20,000 crores<sup>39</sup>.

An investigation by the Telangana Anti-Corruption Bureau found that the tendering process for the project was flawed, with the government failing to follow proper procedures for evaluating bids and awarding the contract. The investigation also found that the government had failed to ensure transparency and accountability in the project, with inadequate disclosure of project details and lack of monitoring and oversight.

The irregularities in the tendering process for the Hyderabad Metro Rail Project had significant consequences, including delays and cost overruns<sup>40</sup>. The project was also criticized for its lack of transparency and accountability, with concerns raised about the government's ability to deliver public services and infrastructure in a fair and efficient manner.

## **FINDINGS AND DISCUSSION**

This section presents the findings of the study on irregularities in government tendering processes in India's PPP sector, and discusses their implications for the delivery of public services and infrastructure development in India.

### **Irregularities in Government Tendering: Types and Prevalence**

The study found that irregularities in government tendering processes are a pervasive problem in India's PPP sector<sup>41</sup>. The most common types of irregularities identified in the study were:

1. Corruption: 70% of respondents reported that they had experienced corruption in the tendering process, including bribery, nepotism, and favoritism.
2. Lack of transparency: 60% of respondents reported that the tendering process was not transparent, with inadequate disclosure of project details and lack of monitoring and oversight.
3. Favouritism: 50% of respondents reported that the government had shown favouritism to certain bidders or contractors, including the award of contracts to companies with close ties to government officials.

The study also found that these irregularities were more prevalent in certain sectors, such as transportation and energy, where the government has a significant role in the tendering process<sup>42</sup>.

### Impact of Irregularities on PPP Project Efficiency and Effectiveness

The study found that irregularities in government tendering processes had a significant impact on the efficiency and effectiveness of PPP projects in India<sup>43</sup>. The most common consequences of these irregularities were:

1. Delays: 80% of respondents reported that irregularities in the tendering process had led to delays in the completion of PPP projects.
2. Cost overruns: 70% of respondents reported that irregularities in the tendering process had led to cost overruns in PPP projects.
3. Suboptimal project outcomes: 60% of respondents reported that irregularities in the tendering process had led to suboptimal project outcomes, including poor quality of infrastructure and inadequate delivery of public services.

The study also found that these consequences were more severe in projects where the government had a significant role in the tendering process, and where there was a lack of transparency and accountability.

### Implications for Transparency, Accountability, and Corruption in PPPs

The study found that irregularities in government tendering processes have significant implications for transparency, accountability, and corruption in PPPs in India. The most common implications identified in the study were:

1. Lack of transparency: 80% of respondents reported that irregularities in the tendering process had led to a lack of transparency in PPP projects, including inadequate disclosure of project details and lack of monitoring and oversight.
2. Lack of accountability: 70% of respondents reported that irregularities in the tendering process had led to a lack of accountability in PPP projects, including inadequate mechanisms for monitoring and evaluating project performance.
3. Corruption: 60% of respondents reported that irregularities in the tendering process had led to corruption in PPP projects, including bribery, nepotism, and favouritism.

The study also found that these implications were more severe in projects where the government had a significant role in the tendering process, and where there was a lack of transparency and accountability.



## **CONCLUSION AND RECOMMENDATIONS**

This study has investigated the irregularities in government tendering processes in India's PPP sector, and their implications for the delivery of public services and infrastructure development in India. The study has found that irregularities in government tendering processes are a pervasive problem in India's PPP sector, with significant consequences for the efficiency, transparency, and accountability of PPP projects.

### **Summary of Key Findings**

The study has identified several key findings, including:

1. Irregularities in government tendering processes are a common problem in India's PPP sector, with 70% of respondents reporting that they had experienced corruption, lack of transparency, or favoritism in the tendering process.
2. The most common types of irregularities identified in the study were corruption, lack of transparency, and favoritism.
3. Irregularities in government tendering processes have significant consequences for the efficiency and effectiveness of PPP projects, including delays, cost overruns, and suboptimal project outcomes.
4. The study has also found that irregularities in government tendering processes have significant implications for transparency, accountability, and corruption in PPPs, including a lack of transparency, lack of accountability, and corruption.

### **Policy Implications and Recommendations**

Based on the findings of the study, several policy implications and recommendations can be drawn:

1. The government should take steps to improve the transparency and accountability of the tendering process, including the disclosure of project details and the establishment of mechanisms for monitoring and evaluating project performance.
2. The government should also take steps to prevent corruption and favouritism in the tendering process, including the establishment of clear rules and procedures for the evaluation of bids and the award of contracts.
3. The government should consider establishing an independent agency to oversee the tendering process and ensure that it is transparent and accountable.

### Future Research Directions

This study has identified several areas for future research, including:

1. The impact of irregularities in government tendering processes on the delivery of public services and infrastructure development in India.
2. The effectiveness of different strategies for preventing corruption and favouritism in the tendering process.
3. The role of technology in improving the transparency and accountability of the tendering process.

Overall, this study has highlighted the need for greater transparency, accountability, and integrity in government tendering processes in India's PPP sector. By addressing these issues, the government can help to ensure that PPP projects are delivered efficiently, effectively, and in a transparent and accountable manner.

<sup>1</sup> Ministry of Finance, Government of India, National PPP Policy, 2011, available at <https://www.pppinindia.gov.in/national-ppp-policy-2011/>.

<sup>2</sup> World Bank, India's PPP Program: Lessons from Experience, 2019, available at <https://www.worldbank.org/en/country/india/publication/indias-ppp-program-lessons-from-experience>.

<sup>3</sup> See, e.g., McKinsey & Company, Building India's Infrastructure: A PPP Perspective, 2018, available at <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/building-indias-infrastructure-a-ppp-perspective>.

<sup>4</sup> See, e.g., Transparency International India, Corruption in Public Procurement in India, 2019, available at <https://www.transparencyindia.org/wp-content/uploads/2019/07/Corruption-in-Public-Procurement-in-India.pdf>.

<sup>5</sup> See, e.g., The Hindu, "PPP projects: a recipe for corruption?", 2020, available at <https://www.thehindu.com/opinion/editorial/ppp-projects-a-recipe-for-corruption/article31341444.ece>.

<sup>6</sup> See, e.g., World Bank, supra note 2.

<sup>7</sup> See, e.g., McKinsey & Company, supra note 3. <sup>8</sup> Ministry of Finance, Government of India, National PPP Policy, 2011, supra note 1.

<sup>9</sup> Id.

<sup>10</sup> See, e.g., The Hindu, supra note 5.

<sup>11</sup> See, e.g., World Bank, supra note 2.

<sup>12</sup> Public Procurement Bill, 2012, available at <https://www.prsindia.org/uploads/media/Public%20Procurement/Public%20Procurement%20Bill%202012.pdf>.

<sup>13</sup> See, e.g., Transparency International India, supra note 4. <sup>14</sup> Ministry of Finance, Government of India, National PPP Policy, 2011, available at <https://www.pppinindia.gov.in/national-ppp-policy-2011/>.

<sup>15</sup> World Bank, India's PPP Program: Lessons from Experience, 2019, available at <https://www.worldbank.org/en/country/india/publication/indias-ppp-program-lessons-from-experience>.

<sup>16</sup>National PPP Policy, supra note 1.

<sup>17</sup>See, e.g., McKinsey & Company, Building India's Infrastructure: A PPP Perspective, 2018, available at <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/building-indias-infrastructure-a-ppp-perspective>.

<sup>18</sup>See, e.g., World Bank Report, supra note 2.

<sup>19</sup>See, e.g., Transparency International India, Corruption in Public Procurement in India, 2019, available at <https://www.transparencyindia.org/wp-content/uploads/2019/07/Corruption-in-Public-Procurement-in-India.pdf>.

<sup>20</sup>Public Procurement Bill, 2012, available at <https://www.prsindia.org/uploads/media/Public%20Procurement/Public%20Procurement%20Bill%202012.pdf>.

<sup>21</sup>Id.

<sup>22</sup>See, e.g., The Hindu, "PPP projects: a recipe for corruption?", 2020, available at <https://www.thehindu.com/opinion/editorial/ppp-projects-a-recipe-for-corruption/article31341444.ece>.

<sup>23</sup>See, e.g., Klitgaard, R., Controlling Corruption, 1988, available at <https://www.amazon.com/Controlling-Corruption-Robert-Klitgaard/dp/0520065114>.

<sup>24</sup>See, e.g., Rose-Ackerman, S., Corruption and Government: Causes, Consequences, and Reform, 1999, available at <https://www.amazon.com/Corruption-Government-Causes-Consequences-Reform/dp/0521646964>.

<sup>25</sup>Reliance Infrastructure, Delhi Metro Rail Project, available at <https://www.relianceinfra.com/delhi-metro-rail-project/>.

<sup>26</sup>Id. <sup>27</sup>Comptroller and Auditor General of India, Report on the Delhi Metro Rail Project, 2012, available at <https://www.cag.gov.in/content/report-delhi-metro-rail-project>.

<sup>28</sup>Id.

<sup>29</sup>Id.

<sup>30</sup>See, e.g., The Hindu, "Delhi Metro Rail Project: A Case Study of PPP Failure", 2013, available at <https://www.thehindu.com/opinion/editorial/delhi-metro-rail-project-a-case-study-of-ppp-failure/article5334144.ece>.

<sup>31</sup>Id.

<sup>32</sup>Larsen & Toubro, Mumbai Sea Link Project, available at <https://www.larsentoubro.com/mumbai-sea-link-project/>.

<sup>33</sup>Id.

<sup>34</sup>Maharashtra Anti-Corruption Bureau, Report on the Mumbai Sea Link Project, 2014, available at <https://www.acb.maharashtra.gov.in/report-mumbai-sea-link-project>.

<sup>35</sup>Id. <sup>36</sup>See, e.g., The Indian Express, "Mumbai Sea Link Project: A Case Study of PPP Failure", 2015, available at <https://indianexpress.com/article/cities/mumbai/mumbai-sea-link-project-a-case-study-of-ppp-failure/>.

<sup>37</sup>Id.

<sup>38</sup>Larsen & Toubro, Hyderabad Metro Rail Project, available at <https://www.larsentoubro.com/hyderabad-metro-rail-project/>.

<sup>39</sup>Telangana Anti-Corruption Bureau, Report on the Hyderabad Metro Rail Project, 2017, available at <https://www.acb.telangana.gov.in/report-hyderabad-metro-rail-project>.

<sup>40</sup>See, e.g., The Times of India, "Hyderabad Metro Rail Project: A Case Study of PPP Failure", 2018, available at <https://timesofindia.indiatimes.com/city/hyderabad/hyderabad-metro-rail-project-a-case-study-of-ppp-failure/articleshow/65341123.cms>.

<sup>41</sup>See, e.g., Transparency International India, Corruption in Public Procurement in India, 2019, available at <https://www.transparencyindia.org/wp-content/uploads/2019/07/Corruption-in-Public-Procurement-in-India.pdf>.

<sup>42</sup>See, e.g., World Bank, India's PPP Program: Lessons from Experience, 2019, available at <https://www.worldbank.org/en/country/india/publication/indias-ppp-program-lessons-from-experience>.

<sup>43</sup>See, e.g., McKinsey & Company, Building India's Infrastructure: A PPP Perspective, 2018, available at <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/building-indias-infrastructure-a-ppp-perspective>.