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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **PUBLIC-PRIVATE PARTNERSHIP (PPP) MODELS IN INFRASTRUCTURE DEVELOPMENT: A NEPAL- INDIA COMPARISON**

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## **1. Introduction**

Public-Private Partnerships (PPP) is a collaborative approach where government agencies partner with private sector entities to finance, design, implement, and operate infrastructure projects. These models aim to leverage the efficiency, innovation, and capital of the private sector while fulfilling public infrastructure needs. PPP have become a widespread phenomenon all over the world. There is no universal accepted definition of what a PPP is. In fact, one can say that PPPs come in many forms and are still an evolving concept. PPPs involve private sector supply of infrastructure assets and services that have traditionally been provided by the government. The World Bank, for example, defines PPPs as “long-term contracts between a private party and a government agency, for providing a public asset or service, in which the private party bears significant risk and management responsibility.” This definition makes clear that PPPs have in common: projects are long-term, usually bundling design, construction, and maintenance and possibly operation and with the objective of providing a public service. Typical contractual arrangements involve Build Operate and Transfer (BOT), Build Own Operate Transfer (BOOT), and concession contracts. Quite popular are also the so-called Design (D), Build (B), Finance (F), Maintain (M) and Operate (O) DBFMO type contracts.

It is for the private market players to submit, during the public tender procedure, an offer for the design, financing, construction, maintenance and as applicable, the operational running of the project. It is also up to the private partner to assume the risks associated with the various aspects. The private partner is responsible for designing the facility and building it in order to deliver the service outputs in accordance with the specifications set out in the tender documentation of the contracting authority. In order to be able to finance, design and construction of the facility, the private partner will need to ensure the financing is in place.

In emerging economies like Nepal and India, PPP play a pivotal role in addressing critical infrastructure gaps that hinder economic growth and development. These countries often face fiscal constraints, limited public resources, and increasing demand for essential infrastructure such as roads, energy, transportation, and urban services. PPPs offer a viable mechanism to bridge the financing gap by attracting private investment and technical expertise. Through collaborative models, governments can leverage the efficiency, innovation, and risk-management capabilities of the private sector to deliver high-quality infrastructure projects on time and within budget. This approach not only eases the financial burden on the public sector but also ensures that infrastructure development keeps pace with rapid urbanization and population growth.

Moreover, PPPs contribute significantly to job creation, technological advancement, and inclusive development by fostering economic activity across sectors and regions. In India, projects such as the Hyderabad Metro and national highway expansions under PPP frameworks have transformed urban mobility and inter-state connectivity, while in Nepal, PPPs in hydropower have boosted access to energy and digital infrastructure. These partnerships also encourage institutional reforms, enhance governance, and promote transparency in project execution.

The objective of this paper is to conduct a comparative analysis of PPP models in Nepal and India, examining their legal and regulatory structures, successes and setbacks, and how each country can optimize PPPs for long-term infrastructure development.

## **2. Overview of PPP Models in Infrastructure Development**

PPP models in infrastructure development serve as collaborative frameworks where the public and private sectors jointly deliver essential public assets and services. Through PPPs, governments can leverage private sector efficiency, innovation, and capital to develop and manage infrastructure projects in sectors such as transportation, energy, water supply, and urban development. The structured sharing of risks and responsibilities ensures that public interests are safeguarded while allowing the private sector to generate fair returns on investment.

Some of prominent models of PPP are:

- **Build and Transfer (BT):** The private entity builds the infrastructure and transfers ownership to the government after completion. No operation or maintenance responsibility lies with the private partner. Used when the government wants full control post-construction.
- **Build-Lease-Transfer (BLT):** The private partner builds the infrastructure and leases it to the public authority for a specified period. After the lease period, ownership is transferred back to the government. The private party recovers investment through lease payments.
- **Build-Operate-Transfer (BOT):** The private party builds, operates, and maintains the infrastructure for a fixed term. Ownership is transferred to the government after the concession period. Revenues are earned via either user charges (like tolls) or government payments.
- **Build-Own-Operate (BOO):** The private sector builds, owns, and operates the project indefinitely. There is no transfer of the facility to the government. Used in sectors where long-term private ownership is viable (e.g., power generation).
- **Lease-Renovate-Operate-Transfer (LROT):** The private partner leases an existing facility, renovates, and operates it for a specified period. After that, the facility is transferred back to the public sector. Common in old infrastructure upgrades (e.g., rail stations, bus terminals).
- **Build-Own-Operate-Transfer (BOOT):** The private party builds, owns, and operates the project for a specified period to recover investment. After the concession period, ownership is transferred to the government. Similar to BOT, but includes temporary private ownership.
- **Build-Transfer-Operate (BTO):** The private partner builds the infrastructure and immediately transfers ownership to the government. Then, the private partner under a lease or concession operates it. Ensures public ownership from the start while utilizing private efficiency.
- **Rehabilitate-Operate-Transfer (ROT):** The private entity rehabilitates existing infrastructure, operates it, and transfers it back after the term ends. Ideal for aging assets that need upgrades and better service delivery.
- **Rehabilitate-Own-Operate (ROO):** Similar to ROT, but here the private entity retains ownership after rehabilitation. Often-used in sectors where permanent private control is encouraged.

- **Contract-Add-Operate (CAO):** The private entity contracts to add new components or capacity to existing infrastructure. Then it operates the upgraded system to recover investment. Common in telecom and power sectors.
- **Develop-Operate-Transfer (DOT):** The private partner develops (often including design and financing), operates, and transfers the asset to the public sector. Broadly used for greenfield projects where the private sector plays a major role in design and planning.
- **Lease Management Agreement:** The government leases public assets to a private entity, which manages and operates them. The government retains ownership and usually sets key service parameters. Common in hospital, education, and water supply sectors.

### 3. Legal and Regulatory Framework in Nepal and India.

The legal and regulatory framework governing PPP in Nepal is evolving and gradually institutionalizing. The Government of Nepal has adopted PPPs as a core strategy for infrastructure development, primarily through the Public-Private Partnership and Investment Act, 2019, which provides the foundational legal basis for structuring, approving, and regulating PPP projects. The Investment Board Nepal (IBN) plays a central role in facilitating large-scale PPP projects, especially in energy, transport, and urban infrastructure sectors.

In contrast, India has developed a more mature and diversified PPP legal framework, supported by decades of policy evolution and institutional strengthening. While there is no single central PPP law, the regulatory landscape is guided by various model concession agreements, sector-specific policies, and guidelines issued by the Planning Commission (now NITI Aayog) and the Department of Economic Affairs (DEA) under the Ministry of Finance. Key instruments include the PPP Appraisal Committee (PPPAC), the Viability Gap Funding (VGF) Scheme, and institutional bodies like NHAI, DMRC, and state-level infrastructure development boards. India's approach emphasizes flexibility, risk-sharing, and standardization of contracts, contributing to a relatively robust PPP ecosystem across sectors such as roads, metro rail, airports, and energy.

India has a mature PPP legal structure backed by:

- The National PPP Policy (draft),

- Sector-specific policies (e.g., Model Concession Agreements),
- Regulatory institutions such as the Planning Commission's PPP Cell and NITI Aayog, and
- Financial institutions like the India Infrastructure Finance Company Limited (IIFCL).

Several states also have their own PPP policies and agencies, like the Andhra Pradesh Infrastructure Authority.

Nepal, on the other hand, operates under:

- The Public-Private Partnership and Investment Act, 2019,
- The Investment Board of Nepal (IBN), which handles large PPP projects, and
- Sectoral policies, such as the Hydropower Policy.

Nepal's legal framework is evolving, with focus areas being risk allocation, investor protection, dispute resolution, and land acquisition.

#### **4. Benefits and Challenges of PPP Implementation**

PPP have emerged as vital instruments for infrastructure development in both India and Nepal, offering benefits such as improved efficiency, access to private capital and technology, and accelerated project delivery. However, their implementation also faces significant challenges including regulatory gaps, financing hurdles, political interference, and limited institutional capacity. While India has made considerable strides with large-scale PPPs across sectors, Nepal is still in the nascent stage of developing a robust PPP ecosystem, making a comparative analysis of their experiences both timely and insightful.

##### **i. Enhanced Infrastructure Development**

In both India and Nepal, PPP models have significantly accelerated infrastructure development, particularly in transport, energy, and urban services. In India, mega projects like the Delhi Airport and Hyderabad Metro exemplify how private sector involvement can inject efficiency, technology, and innovation into public infrastructure. Similarly, in Nepal, projects like the Upper Tamakoshi Hydropower Project and the Kathmandu-Terai Fast Track have demonstrated how PPPs can help bridge funding and expertise gaps in a developing economy. These collaborations have enabled governments to deliver large-scale infrastructure projects without entirely relying on public funding, thereby speeding up development timelines.

**ii. Access to Private Capital and Technology**

One of the key advantages of PPPs is the **mobilization of private capital and expertise**. Governments with budgetary constraints, like Nepal, benefit immensely by leveraging private investment for public goods. Private partners not only bring financial resources but also advanced technologies and international best practices that are often lacking in government departments. In India, for example, smart cities and logistics hubs developed through PPPs have integrated cutting-edge technology, such as automated ticketing systems, AI-based surveillance, and environmental monitoring tools—capabilities that would have been difficult to implement solely through public agencies.

**iii. Improved Efficiency and Service Delivery**

PPP arrangements typically emphasize performance-based outcomes, ensuring better accountability, efficiency, and timely delivery. In India, PPPs have been instrumental in improving operational efficiency in sectors like roads, ports, and healthcare. The private sector's focus on profit and reputation acts as an incentive to maintain high service standards. In Nepal, though PPP adoption is still emerging, early projects indicate that involving the private sector can lead to better maintenance and sustainability of services, such as in solid waste management or water supply systems, compared to traditional government-run models.

**iv. Risk Sharing and Innovation**

PPPs distribute project risks—financial, operational, and construction-related—between the public and private entities. For instance, in India's road and airport projects, private players often bear the demand and revenue risk, while the government facilitates land acquisition and regulatory clearances. This risk-sharing structure encourages innovation and long-term planning. In Nepal, while risk allocation mechanisms are still maturing, the PPP model provides a platform for introducing innovation in construction methods, energy management, and sustainable development—sectors where government capacities are often limited.

## **Challenges of PPP Implementation**

**i. Institutional and Regulatory Gaps**

Both India and Nepal face challenges in ensuring a robust legal and institutional framework for PPPs. While India has developed comprehensive policies and guidelines

at the central and state levels (like the Model Concession Agreements), gaps remain in enforcement, standardization, and dispute resolution. In Nepal, although the government has introduced the *Public-Private Partnership and Investment Act 2019*, the institutional setup remains weak, with limited capacity in public agencies to design, negotiate, and monitor complex PPP contracts. This often leads to delays, mismanagement, and lack of investor confidence.

**ii. Financing and Revenue Risks**

Securing financing remains a critical barrier in both countries, especially for long-gestation infrastructure projects. In India, issues as land acquisition delays and legal disputes can erode investor confidence and strain finances. Projects often rely heavily on bank loans, which increases systemic risk in the banking sector. In Nepal, the financial ecosystem is even more fragile. Limited availability of long-term capital, currency risks, and underdeveloped financial markets deter large private investments. Moreover, cost recovery mechanisms (like tolls or user fees) are often politically sensitive, creating uncertainty around revenue streams.

**iii. Political Interference and Bureaucratic Hurdles**

PPPs require long-term commitments and political stability—factors that are often inconsistent in developing democracies. In India, frequent policy shifts, bureaucratic delays, and unclear responsibilities between government agencies can stall projects. In Nepal, political instability and changes in leadership often result in cancelled contracts, renegotiations, or lack of follow-through. Moreover, bureaucratic red tape and lack of coordination among government departments significantly impede timely approvals and execution.

**iv. Lack of Technical and Managerial Capacity**

PPP projects are technically complex and require specialized skills in areas such as project finance, risk management, and contract enforcement. In India, despite having a more mature PPP ecosystem, many state-level agencies still struggle with the expertise needed to evaluate and oversee PPPs effectively. In Nepal, the challenge is more severe due to the limited availability of trained personnel and institutional support. This leads to poorly drafted contracts, weak monitoring systems, and vulnerability to corruption or inefficiencies.

While **PPP models offer transformative potential** for infrastructure development in both India and Nepal, their success hinges on strengthening **institutional frameworks, financial systems, stakeholder trust, and technical capacities**. India, with its more

developed policy ecosystem, has several successful PPP projects that Nepal can learn. However, both countries must continue refining their approaches to ensure PPPs remain inclusive, transparent, and sustainable.

## 5. Case Studies and Practical Examples

### i. Delhi Airport (IGI Airport) – GMR Group

- **Sector:** Aviation
- **Model:** BOOT (Build–Own–Operate–Transfer)
- **Details:**
  - ✓ Operated by Delhi International Airport Limited (DIAL), a consortium led by GMR Group.
  - ✓ Transformed IGI Airport into one of the top airports globally, with Terminal 3 being a flagship project.
  - ✓ GMR had a 30-year concession (extendable by another 30 years).
  - ✓ Investment: Over \$2 billion.
  - ✓ Outcome: Increased capacity, better service quality, international awards for excellence in airport service.

### ii. Hyderabad Metro Rail – L&T Metro Rail Hyderabad Ltd.

- **Sector:** Urban Transport
- **Model:** DBFOT (Design–Build–Finance–Operate–Transfer)
- **Details:**
  - ✓ A 72 km long metro rail network, one of the largest PPP-based metro projects in the world.
  - ✓ Developed by Larsen & Toubro (L&T) under a 35-year concession period.
  - ✓ The government provided Viability Gap Funding (VGF) of ₹1,458 crore (~\$200 million).
  - ✓ Outcome: Relieved traffic congestion, modern transit with smart cards and real-time tracking.

### Successful PPP Projects in Nepal:

- i. Upper Bhote Koshi Hydroelectric Project
  - **Sector:** Energy

- **Model:** BOOT
- **Details:**
  - ✓ A 45 MW run-of-the-river hydroelectric project developed by **Bhote Koshi Power Company (BKPC)**, a subsidiary of **Harza International (USA)** and **Himal Power Ltd.**
  - ✓ 30-year concession; to be transferred to the Nepal government after the term.
  - ✓ Supplies power to **Nepal Electricity Authority (NEA)** under a Power Purchase Agreement (PPA).
  - ✓ **Outcome:** Stable power supply, significant foreign direct investment, and technical skill transfer.
- ii. **Upper Karnali Hydropower Project**
  - **Type:** Hydropower PPP Project (900 MW)
  - **Developer:** GMR Group (India) — a foreign private entity
  - Concession Agreement signed with **Investment Board Nepal (IBN)**
  - Structured as a **PPP under BOOT (Build–Own–Operate–Transfer)**
  - Nepal gets **free energy (around 12%)**, and the rest is exported to India.

## 6. Comparative Analysis and Policy Recommendations

While Public-Private Partnerships (PPPs) have proven instrumental in addressing infrastructure gaps in both India and Nepal, their implementation experiences differ considerably. India benefits from a relatively mature PPP ecosystem, supported by a strong legal framework, institutional capacity, and diverse sectoral involvement. In contrast, Nepal is still developing its PPP landscape, with limited experience, institutional readiness, and private sector confidence. Both countries, however, face shared challenges such as regulatory hurdles, financing risks, and public resistance, making tailored reforms and cross-border knowledge exchange crucial for sustainable development.

### i. Policy Framework and Maturity

India has a more mature and structured PPP ecosystem compared to Nepal. Since the early 1990s, India has systematically institutionalized PPPs through frameworks like the Model Concession Agreement (MCA), the Public-Private Partnership Appraisal Committee (PPPAC), and the Viability Gap Funding (VGF) scheme. The government has also launched sector-specific initiatives such as the Hybrid Annuity Model (HAM)

for roads and the National Monetization Pipeline.

In contrast, Nepal is still building its PPP framework. The *Public-Private Partnership and Investment Act, 2019* marks a significant step, but implementation capacity remains limited. Nepal lacks standardized procurement procedures, dispute resolution mechanisms, and technical expertise, making it challenging to attract and sustain large-scale PPP projects. While India has progressed to refining and deepening PPP structures, Nepal is at a foundational stage, focused on policy formulation and awareness building.

**ii. Sectoral Focus and Investment Trends**

India's PPP projects span a wide range of sectors including transport (roads, railways, airports), energy, urban development, and even healthcare and education. The success of large-scale projects like the Delhi Airport (GMR-led) and Hyderabad Metro Rail exemplifies India's ability to undertake capital-intensive projects through private participation.

Nepal, on the other hand, has a narrower sectoral focus, primarily targeting hydropower, transport, and urban utilities. Most projects are still at the pilot or early development stage. While hydropower projects like the Upper Tamakoshi and private sector involvement in transmission lines are promising, challenges like land acquisition, coordination issues, and political instability hinder scalability.

**iii. Institutional Capacity and Project Execution**

India has developed institutional structures at both central and state levels—such as PPP cells in NITI Aayog and state infrastructure agencies—to design, execute, and monitor projects. Moreover, financial institutions such as the India Infrastructure Finance Company Ltd. (IIFCL) and Infrastructure Debt Funds (IDFs) provide long-term financing options.

Nepal is still building institutional capacity. The Investment Board Nepal (IBN) has been tasked with overseeing large-scale PPPs, but it lacks sufficient human resources, sector-specific expertise, and legal clarity. Execution delays are common due to inter-agency conflicts, procedural ambiguities, and a lack of project preparedness.

**iv. Private Sector Participation and Risk Appetite**

India has a relatively strong and experienced private sector with both domestic and foreign players actively investing in PPPs. Over the years, regulatory reforms and institutional learning have built greater trust between the government and private players.

In Nepal, private sector participation is cautious and limited. Investors remain wary due to unclear risk-sharing mechanisms, currency risks, and inconsistent government support. The lack of robust legal protections for investors and an underdeveloped financial market also make PPPs a less attractive option.

### **Policy Recommendations for Strengthening PPP Implementation**

#### **i. Strengthen Legal and Regulatory Frameworks**

Both India and Nepal need continuous reforms to enhance the legal certainty of PPP contracts. Nepal should prioritize updating and harmonizing its PPP legislation, ensuring clarity in land acquisition, dispute resolution, and environmental clearances. India can benefit from streamlining its multiple overlapping policies and improving enforcement, especially at the state level, where project implementation is often delayed due to bureaucratic inertia.

#### **ii. Build Institutional Capacity and Technical Expertise**

A key recommendation for Nepal is to build institutional and technical capacity at all levels of government. Training programs for government officials, hiring specialized legal and financial advisors, and establishing standardized PPP toolkits will improve project preparation and execution. India, while more advanced, still requires better coordination between central and state governments and greater decentralization of technical expertise to local bodies.

#### **iii. Promote Transparent and Competitive Procurement**

Both countries must ensure transparency and fairness in the bidding process to boost investor confidence. Establishing online project portals with clear timelines, evaluation criteria, and post-award monitoring will minimize corruption and ensure public trust. Nepal, in particular, should adopt India's e-procurement and transaction advisory models to streamline project selection and implementation.

#### **iv. Encourage Regional Cooperation and Knowledge Sharing**

Given their geographic and developmental similarities, India and Nepal should collaborate on cross-border PPP initiatives, particularly in sectors like hydropower, trade infrastructure, and tourism. India can play a mentoring role by sharing technical expertise, legal models, and institutional strategies through bilateral cooperation or regional platforms like BIMSTEC and SAARC. With strategic reforms, enhanced institutional capacity, and a strong public-private trust framework, both countries can

harness PPPs to drive inclusive and sustainable infrastructure development.

## 7. Conclusion

The implementation of Public-Private Partnerships (PPPs) in India and Nepal reflects distinct trajectories shaped by each country's institutional maturity, policy frameworks, and economic readiness. India has made significant strides in institutionalizing PPPs across various sectors such as transportation, energy, and urban infrastructure, benefiting from robust regulatory frameworks, established financing mechanisms, and a relatively experienced private sector. Its ability to scale up and innovate through models like the Hybrid Annuity Model and Infrastructure Investment Trusts has positioned it as a regional leader in leveraging PPPs for public service delivery.

Nepal, on the other hand, is in the early stages of developing its PPP ecosystem. Although the enactment of the Public-Private Partnership and Investment Act, 2019 was a progressive step, challenges such as institutional bottlenecks, low investor confidence, financing constraints, and limited technical expertise continue to hinder large-scale implementation. Nonetheless, Nepal's strategic focus on hydropower, urban development, and transportation indicates a growing recognition of the potential PPPs hold in driving sustainable development.

The comparative experience of both countries reveals a valuable opportunity for mutual learning. India can offer technical and institutional support, while Nepal can adopt a more targeted and risk-sensitive approach to avoid past pitfalls. For both, the future of PPPs lies in strengthening governance structures, fostering transparent public-private dialogue, and ensuring that infrastructure development is inclusive, sustainable, and responsive to local needs.

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