

Transparency and Accountability: With Special reference to Public Private Partnership Projects

**Central Information Commission
Sixth Convention
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Panel Discussion Highlights

- Significance of PPPs
- Context of Transparency and Accountability
- Cases of Transportation Infrastructure Projects
- Issues of Transparency and Accountability
- Implication for PPP Policy

- *PPP projects are an important vehicle for economic development, providing much needed market orientation, operational efficiency and resource additionality.*
- *PPPs play an increasing role in infrastructure development. 50% of financial resources are expected to come through private investments in PPPs during the XII Plan. This is an increase from the 36% in the XI Plan.*
- *PPPs also play an important role in social infrastructure*

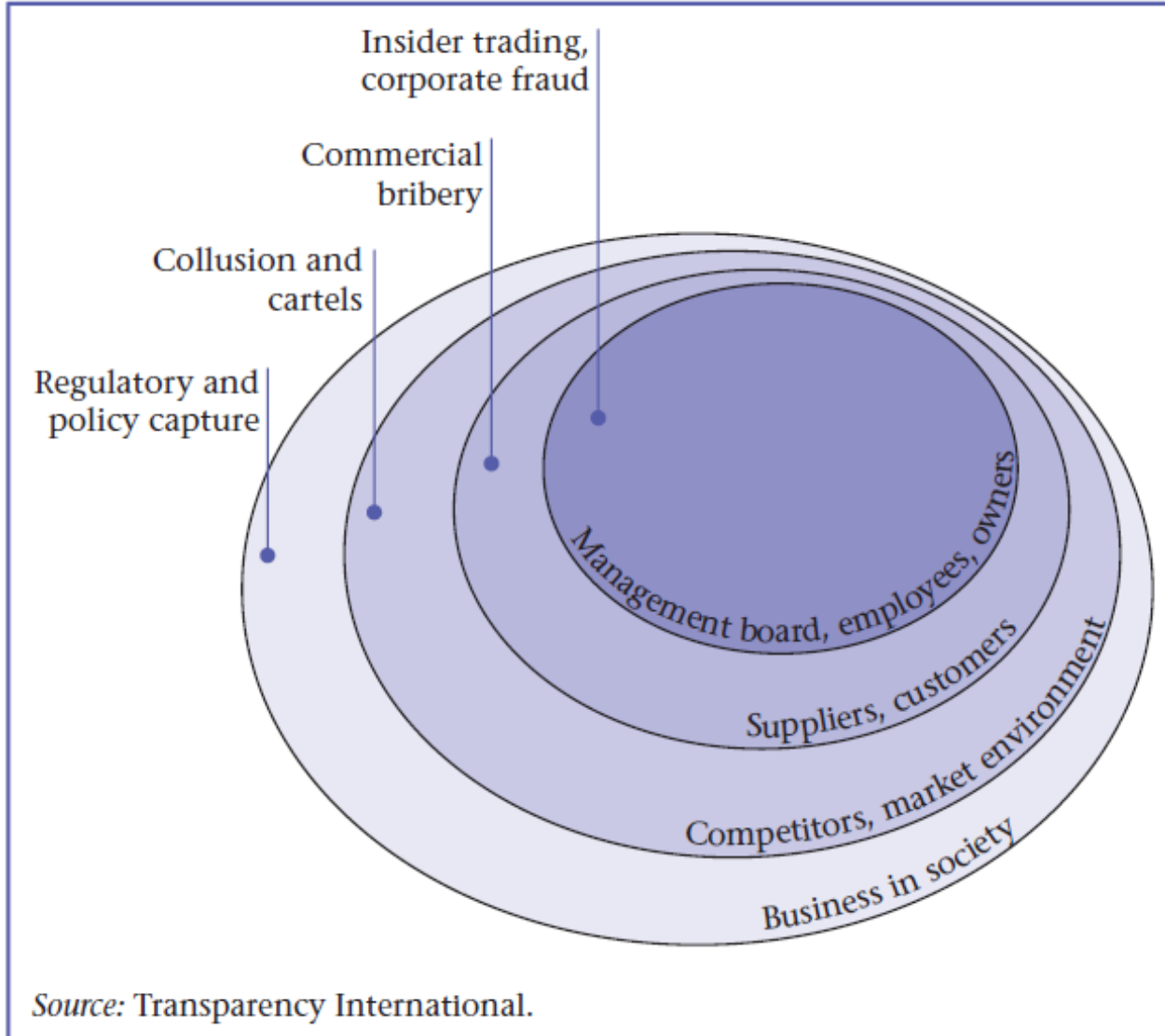
Infrastructure Investments: XII Plan

Sector	X Plan (Actual)		XI Plan (Original Projections)		XI Plan (Revised Projections)		XII Plan (Projection)	
	Rs cr	%	Rs cr	%	Rs cr	%	Rs cr	%
Total Infrastructure	906,074		2,056,150		2,054,205		4,099,240	
Public	680,854	75.14	1,436,559	69.87	1,311,293	63.83	2,049,620	50.00
Private	225,220	24.86	619,591	30.13	742,912	36.17	2,049,620	50.00

Share of Infrastructure as % of GDP: X Plan 5.15
: XI Plan (Original) 7.60
: XI Plan (Revised) 7.55
: XII Plan (Projected) 9.95

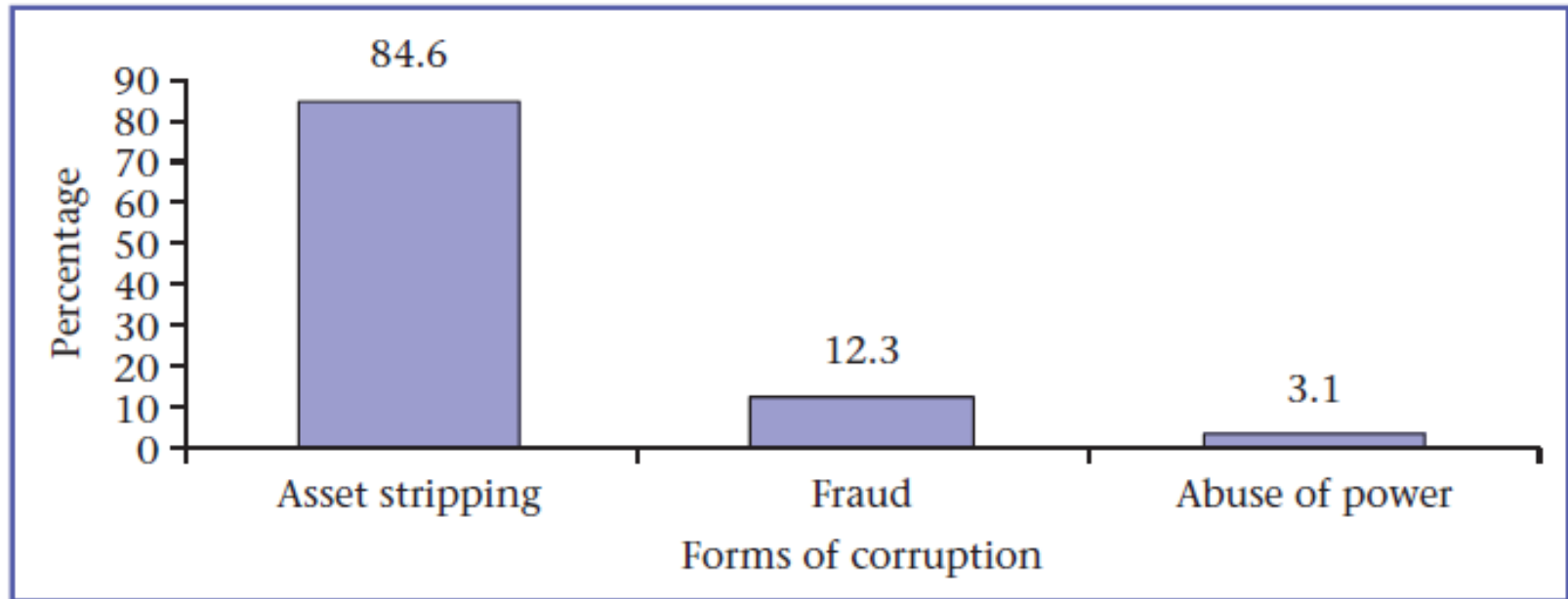
- *We are still in a learning mode, with need for greater maturity while engaging with PPPs*
- *The principle of PPPs is to leverage private sector entrepreneurship (and profit drive) for public good*
- *This is set in a larger context of ethics and corruption in India*

Corruption Risks Within Spheres of Corporate Activity



Source: Global Corruption Report 2009

Forms of Corruption in the Private Sector, 2007



Source: Global Corruption Report 2009

Country/Territory: India

Year	RANK	REGIONAL RANK	CPI 2010 SCORE	90% CONFIDENCE INTERVAL		SURVEYS USED
				LOWER BOUND	UPPER BOUND	
2010	87	16	3.3	3.0	3.5	10
2008	85	14	3.4	3.2	3.6	10

Source: CORRUPTION PERCEPTIONS INDEX 2010 and 2008

- *While PPPs have delivered (telecom, central roads), there are many examples where transparency and accountability in PPP Infrastructure projects have been less than desirable.*
- *We mention a few cases from Transport Infrastructure projects*

- *Airports*
 - *Changing criteria for evaluation and qualification of bidders*
 - *Base for revenue sharing*
 - *ADF charges*
- *Ports*
 - *Common users vs priority berthing for key customers*
 - *Determination of permissible tariff*
- *Roads*
 - *Bundling of real estate development, with consequences on land acquisition*
 - *Determination of toll rates*
- *Railways*
 - *Changing rules of the game for container train operators*

Issues of Transparency and Accountability

- Project structuring, , period of concession, public consultation
- Open competitive bidding, eligibility (is primary user okay? – matter for Competition Commission)
- Clarity in RFQ, RFP, bid evaluation and selection of concessionaire
- Clarity in concession agreements
- Subsidies (capital and operating), release of payments
- Monitoring performance, penalty imposition, step-in

Issues of Transparency and Accountability

- Role and stake of PPP player
 - Public consultation
 - Captive clients vs common users
 - Many projects are justified on social benefits through an economic rate of return
 - Safety
 - Pollution
 - Time
 - These need to be monitored, measured and disclosed

PPP

Draft Policy

- **Enhancing transparency in PPP projects** Ensuring transparency in Government processes is the topmost priority of the Government; PPP projects processes need to be transparent to retain the trust of the stakeholders. The Government has notified strong procedures that are to be adopted in the procurement of a PPP project. These ensure that a level playing platform is provided to all the bidders interested in the project. To further instill transparency, the Government will:
 - i. Publish separate mandatory disclosures and fair practices which all PPP projects should follow.
 - ii. Set up a dedicated dispute resolution mechanism to address issues related to bidding and award of PPP projects.
 - iii. Develop new market based products, such as independent pre-bid rating, to assist investors in identifying well-structured PPP projects.
 - iv. Explore possibilities of setting up a web based PPP market place to transparently market upcoming and ongoing PPP opportunities.

PPP

Draft Policy

- **Regulatory Mechanisms**

- As provision of many public assets and/or related services has natural monopolistic characteristics, the same would be regulated to ensure that the interests of users and service providers are protected taking into consideration the affordability of the users and certainty of pricing and revenue stream to the private party. The regulation would be through independent (multi-sectoral, where applicable) regulators, wherever there is no sector specific regulator, regulation would be through contractual arrangements. Where the regulatory mechanism becomes operational subsequent to a PPP contract execution, Government commits to take cognizance of the contract provisions would prevail to minimize regulatory risks

PPP

Draft Policy

- **Audit Mechanisms**

- To maintain transparency, equity and fairness in developing and implementing projects , the Government would continue to strengthen the governance processes and institutions that are accountable to the stakeholders. The financial management, accountability and audit obligations, to verify the robustness of the development, procurement processes adopted and functioning of the public sector entities would remain as per the applicable legislation.
- The oversight would extend to the manner of selection of the private entity, procedures observed in releasing payments from time to time, review / monitoring of quality of service and Value for Money analysis, with the view to ensure adherence to key performance indicators enshrined in the contract. The oversight would also extend to ensure that the terms of contract have been adhered to in terms of ensuring condition precedents, VfM performance assessments, imposition of penalties for non-performance, reckoning of termination payments, etc. Any post award negotiation and / or contract modification would remain a critical area focus during the oversight process.

PPP

Draft Policy

- These (*audit*) provisions would **not be applicable to the private sector entities (including the special purpose vehicles** set up for provision of public assets and/ or related services), irrespective of whether any financial assistance (in the form of user charges, annuity, viability gap funding or any other form/ means) has been extended or not.
- ???

RTI Act

- 2. In this Act, unless the context otherwise requires,—
- (f) "**information**" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form **and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;**
- (h) "**public authority**" means any authority or body or institution of self-government established or constituted—
- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,
- **and includes any—**
- **(i) body owned, controlled or substantially financed;**
- **(ii) non-Government organisation substantially financed,**
- **directly or indirectly by funds provided by the appropriate Government;**

Issues of Transparency and Accountability

- Role of watch dogs
 - Regulator
 - Competition Commission
 - **CIC**
 - Appellate
 - CVC
 - CAG
 - CBI
 - Attorney General
 - Parliament and Committees
 - Media
 - Lok Ayukta
 - Courts

- Are we okay with just the public authority of PPPs coming under RTI?
- Should PPPs come under RTI?
 - On which issues?
- Should the promoters come under RTI?
 - On which issues?

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THANK YOU