ISID FOUNDATION DAY LECTURE

PUBLIC-PRIVATE PARTNERSHIPS AND CHANGING FACE OF GOVERNANCE IN INDIA
An Exploration

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I consider it a great honour for being invited this year to deliver the Foundation Day lecture at the Institute for Studies of Industrial Development. I would like to express my thanks to the Chairman of the Institute Shri T.N. Chaturvedi and Prof. S.K. Goyal, Vice Chairman and the Director Prof. Murthy and his colleagues for this invitation. I have had the privilege of interacting and being associated with Prof. Goyal and his colleagues ever since the days of the Corporate Studies Group (CSG) at the Indian Institute of Public Administration, which then evolved into this Institute. On many an occasion I have gained from their research output and benefited from the excellent databases the Institute has built over the years. The policy discourse in the country has also been enriched by the painstaking work done by the Institute. It should also be a matter of pride for all those associated with Institute from its humble beginnings that it has built over the years a widely recognized research base and enviable physical facilities not easily available in the country. The auditorium that has been inaugurated today and where we are sitting is an example of this. This makes today's occasion more meaningful and rewarding for me. The topic I have chosen to speak today is on the issue of "Public-Private Partnerships and Changing Face of Governance in India".

Over the past few years, while there has been great stress on achieving higher and higher rates of economic growth, the institutional strategy to achieve these higher rates of growth has not received adequate attention in the public domain or been open to much public scrutiny. The neo-liberal reforms have signalled the importance of technical discussion with economists, experts and professionals leading the public discourse in how to attract private investment and frame appropriate public policy for doing so. Much store is put by rationality of liberalization of economy and the role of the market in meeting the challenges of development. The role of the government is sought to be constrained or it is urged just to get out of the way. Governance reform is either concerned with re-orienting the existing government institutions to promote the role of the market or creating such new institutions that will facilitate private investment. The processes of democracy and the demands and needs of the citizens that tend to offer resistance to the implementation of such a strategy are seen as impediments—a discordant note in the well-designed development process. For after all, it is assumed, that our development has faltered precisely because there have been pulls and pressures from groups seeking their own interests and diluting the pursuit of public good. So what is needed is a governance system that is insulated from these pulls and pressures if not a leader who can do it.

The inclusion of good governance in the neo-liberal agenda had two very important implications. One was that the pursuit of good governance became essentially a pursuit of establishing such institutions and processes that would facilitate the functioning of markets. State began to be seen as a facilitator for non-state actors to operate and not an institution to intervene in society. Consequently, providing support for successful operation of business became the central theme of state's role and activity. The second implication flowing from the first was that business assumed greater power and influence than other segments of society. Large corporate houses began to see themselves as partners of state in development. Thus, good governance came to mean the development of governing styles in which boundaries between and within public and private sectors became blurred. (Stoker, 1998:155) The new formulation underlined that political institutions no longer exercise a monopoly of the orchestration of governance. (Pierre, 2000:4) The concept of governance indicated a shift away from well-established notions of the way government sought to resolve social issues through top down approach.

Neo-liberal reform emphasizing the role of market was widely accepted because of state failure in providing services to all its citizens. But market also failed to provide services to the marginalized and the poor. Thus, Public-Private Partnerships (PPP) as new institutions are seen as a response to market failure and state failure. PPP offered a new institutional arrangement that would mitigate the perverse effects of the state and market. In this normative formulation, PPPs are associated with desirable attributes of collaboration, trust, responsibility and participation. (Utting and Zammit, 2006:3)

The emphasis on public-private partnerships changed the pattern of governance, as well as adaptations in management practices and in perceptions regarding the role and responsibilities of different development actors in the context of globalization and liberalization.

PPPs appeared as a pragmatic turn in the new governance architecture because of the context where the financial circumstances of both the government and private sector were changing. Governments were suffering from financial crisis and fiscal deficits in the 1980s while the corporate sector was doing well with good returns and technological advancement. Across the world partnership among the three actors—state, market and civil society began to be promoted as a strategy of good governance. The partnerships promise to avoid duplication of efforts and are seen to draw on their complementary resources and capabilities to design more effective problem solving mechanisms. They promise to increase responsiveness of policies and create accountability by including other actors—market and civil society—into decision-making processes. They are also presumed to improve compliance with and implementation of political decisions.

Collaboration between the public and private sector is not a new phenomenon but as strategy to deliver public goods and services as part of the new governance style is new. In this avatar, it has taken many forms and has become amenable to many definitions. It has been pointed out, that there is no internationally agreed definition of a public-private partnership (Lakshmanan, 2008). While it is broadly agreed that PPP is transfer of private investment on infrastructure projects that were traditionally in the realm of the public sector, the form that it takes is in the realm of ambiguity. The PPP may encompass the whole spectrum of approaches from private participation through the contracting out of services and revenue sharing partnership arrangement to pure non-recourse project finance, while sometime it may include only a narrow range of project type. The PPP has two important characteristics. *First*, there is an emphasis on service provision as well as investment by the private sector. *Second*, significant risk is transferred from the Government to the private sector. The PPP model is very flexible and discernible in variety of forms (Lakshmanan 2008:40).

Typically, however, PPP is not privatization. 'The key difference between the PPP and privatization is that the responsibility for delivery and funding a particular service rests with the private sector in privatization. The PPP, on the other hand, involves full retention of responsibility by the government for providing the services. In case of ownership, while ownership rights under privatization are sold to the private sector along with associated benefits and costs, the PPP may continue to retain the legal ownership of assets by the public sector. The nature and scope of the services under privatization is determined by the private provider, while it is contractually determined between the parties in PPP. Under privatization, all the risks inherent in the business rest with the private sector while, under the PPP, risks and rewards are shared between the government and the private sector.'

In closing this part of my presentation, I would like to emphasize that PPPs began as institutions to attract private sector investment in infrastructure like road building or constructing sea ports and airports but are now spreading to the provision of essential services like water, power and gone further into education and health sectors. There appears to be a quest for standardization and the government seems to think that PPPs are worthy of all sectors. The proliferation of PPPs raises two very important questions: One is that of the way public goods and services are delivered and the other is of accountability of such institutions in a democratic set up. It is now widely accepted that the services that were traditionally provided by the government can be provided by the private sector alone or in partnership with government. What was pragmatism is now turning into orthodoxy and most service provisions are being turned into PPPs. Secondly, the PPPs are outside the normal governmental hierarchical system which ends up with Minister in Parliament being held accountable for all the deeds of her Ministry. They are created as semi-autonomous institutions which abide by the contracts that they have entered into through negotiation and bargaining between one partner which is the state and the other is the corporate sector that is bringing financial and technological resources. Failure to live up to the contracts is a legal issue to be decided by the courts. They appear to be part of an emerging architecture of governance in which new semi-autonomous institutions are being created so that they are insulated from the day to day political pressures and perform professionally to fulfil the goals set for them.

It is important to question how the private sector which works for profit subsumes this over-riding goal of its existence for the pursuit of public interest. Experience of many other countries has led many critics to argue that this strategy is privatization by stealth and the bargains have generally been more in favour of corporate interests. The argument is that large corporate sector has easier access to finances and technology and thus eases out both government partners and community organizations in decision-making. The capacity of state institutions which are constantly berated for being weak and corrupt in India cannot have the capacity to work on equal terms with the corporate sector. To expect such government institutions to enforce contracts, and regulate partnerships is a challenge by itself.

In classical terms, this challenge is that of a weak state and powerful corporate sector. Most governments have resolved this challenge by strengthening bureaucracy. Traditionally, India has used the neutral professional model for creating a civil service that has capacity to confront local conflicts but also the competence to manage macro problems. The expectation is that such a way to organize the civil service will strengthen its capacity to work for public interest. However, for a long time doubts have been expressed about its ability to rise to such expectations. But in the neo-liberal era, reforming the bureaucracy has taken a different turn. It is of committing it to facilitating the private sector to be partners in development and creating incentives for greater private investment in the economy.

Clear signals emanated from the top that the goal of government was to attract private sector investment whether through creating favourable conditions for it or by creating institutional vehicles. The Prime Minister speaking at a McKinsey meet in 2007 talked of synergy between public support and private initiative and addressing business organizations reiterated his government's commitment to facilitate private investment.[1] This has been followed by his colleagues repeating the same assurance and expressing concern about India's low ranking in World Bank's annual rankings in this regard in its Doing Business Reports.[2]

As a sign of the importance of this strategy, a Committee under the chair of the Prime Minister was established to smoothen any wrinkles that crept in the way of encouraging

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1 Manmohan Singh, "We're Off to A Good Start: But we have to do more despite fractured mandate" (Excerpt from an address delivered to the McKinsey meet), *The Times of India*, October 25, 2007.

2 The World Bank conducts a world wide survey assessing the business environment and the speed with which a government responds to an application to set up an enterprise. In a survey carried over 183 countries, World Bank has ranked India at 132 in 2009 with Singapore, New Zealand, United States, Hong Kong, Denmark and United Kingdom being at the top in that order.

PPPs. Other coordinating mechanisms at the level of bureaucrats followed. A key initiative of the government was the Viability Gap Funding Scheme which provided financial support to those infrastructural projects that were economically justifiable but not commercially viable. In its 2007–08 budget, government also allocated Rs. 100 crore for supporting the development of credible and bankable PPP projects that can be offered to the private sector.

In order to expedite projects in PPP mode, government has sought technical assistance from Asian Development Bank for what it calls Mainstreaming PPP Initiative in India. This assistance has helped to develop training programmes for the civil servants and conduct information exchange seminars involving some leading management training institutions of the country. Regional workshops have been held in which both the bureaucrats and members of the corporate sector participate to present key concerns and help create mutual trust and understanding. To create an improved relationship between the bureaucrats and the private sector, other informal measures are also being attempted. Senior civil servants are being permitted to go on deputation to work in multi-national corporations or large corporate houses *in public interest*.

Thus, the signals are clear. The thrust of governance is to promote private sector and the strategy is to create a partnership which facilitates the corporate sector to invest in infrastructural development in the country so necessary for attracting foreign investment particularly. Bureaucracy is being positioned to serve this goal. With the blurring of public and private boundaries, this presents a dilemma. Who serves public interest and who guards it? Is public interest same as private interest even when the primary basis of the existence of business is to earn profits? It appears that we have resigned ourselves to give civil society organizations or resistance movements the privilege of raising issues of public interest sometimes to our peril.

A step in raising questions about public interest and to explore whether the PPPs serve it is to explore to what extent are under public scrutiny or part of public discourse of strengthening democratic governance. In a recent study, (Mathur *et. al.* 2013) we have attempted to examine some of these issues.

India is still struggling to define processes and mechanisms of accountability for partnerships. One of the first requirements is that of financial and legal accountability of public expenditures. Constitutionally, the Comptroller and Auditor General (CAG) has the responsibility for performing this task. However, in the case of partnerships, the Comptroller and Auditor General continues to grapple with ambiguities of scope of audit of PPPs. The guidelines issued for audit of PPPs state that purpose of audit is not to audit the private sector but to review the end results rather than the how of achieving them. The Planning Commission insists that only the public part of PPP should be audited and not the private sector. The CAG insists that every rupee spent out of the public exchequer is within his purview. Despite the government hesitation, the CAG has gone ahead and has submitted audit reports on some partnership projects including those of the construction of international airports at Delhi and Bengaluru and substantiated many comments already in public domain that certain decisions were against public interest and were in favour of private operator. But the question still remains: Is PPP a public authority within the scope of public audit? Or is it a private institution?

The passage of the Right to Information Act in 2005 has been hailed as an important democratic step empowering citizens. It is a welcome move in a democracy that recognizes transparency as key to accountability. In spite of this Act, information on PPPs is given very hesitantly. The main bone of contention is whether such projects come under the ambit of being a public authority or not. The argument in favour of bringing the PPP projects under the RTI scanner is that any project which involves the government in any capacity should be subject to the same checks and balances as the government itself. There has been a tug of war between the Planning Commission and Chief Information Commissioner (CIC) on this issue. The CIC has insisted that PPP project should be considered as a public authority within the definition of the RTI Act. The Planning Commission has rejected this argument and appears to have questioned how a concessionaire, a private firm, performs its job is not relevant from the RTI point of view. The Law Ministry came in support of this view in 2011. However, there are assurances that the monitoring reports of PPP projects will be put on the website and citizens can seek information on them. One should mention here that some progress is being made in loosening the rigid stand of the government on this issue. It is reported that the government has said that all public authorities should proactively disclose information about PPPs on their websites. This disclosure will be voluntary, though. (*Times of India*, April 17, 2013)

In both the cases of audit and right to information, there is a hesitation to make the operations of PPPs public. The other democratic institution that can demand information and comment on the functioning of PPPs is the Parliament. And this is also not a success story. Parliament has also not been a significant player in seeking accountability of PPP strategy for attracting private investment. Our survey in the study that we cited earlier, (Mathur, *et. al.* 2013) reveals that few questions have been raised that have led to a discussion. Mostly information has been sought which has been given in written replies. This can be seen as a benign neglect or agreement of the PPP strategy of the parliamentarians.

Thus as the country moves forward towards greater democratization and become responsive to local needs through decentralization, there is an effort to fragment the government—one part that can be opaque even when it affects the citizens lives critically.

Despite these concerns, Government of India is going ahead with the PPP strategy and has committed itself to an allocation of 9 per cent of GDP for infrastructure investment during the Eleventh Five Year Plan all through PPP. The

Approach Paper for the Twelfth Five Year Plan mentions that this approach has contributed significantly to the recent strides in rolling out a large number of PPP projects in different sectors. India has 1,017 PPP projects accounting for an investment of Rs. 4,86,603 crore. According to the Private Participation in Infrastructure database of the World Bank, India is second only to China in terms of number of PPP projects and in terms of investments, it is second to Brazil.

Jury is still out on the socio-political impacts of such an institution. Few formal evaluations have been commissioned to measure their reach or consistent audits conducted to assess the financial discipline in the projects. Commuters aspirations and the functioning of Expressway from Delhi to Gurgaon demonstrates how time consuming and difficult it is to get relief only through courts. In a partnership in which a hospital in Delhi was supposed to provide free services to the poor and the marginalised, it took the High Court to issue a notice to the hospital. "It is completely unfair on the part of the hospital that they are not abiding by orders of giving free treatment to poor," observed a division bench of the High Court. To get the relevant information on the website was an achievement of a struggle. Grievance machinery does not exist and transparency is not seen as needed, the autonomy of PPPs is being achieved as the effort is to insulate them from the political domain.

What is worrying is that PPPs are being replicated in every sector of the economy. It is one thing to build physical infrastructure but it is entirely another matter to supply drinking water, for example, to citizens on this basis. It is now well known that large multinational companies building infrastructure see PPPs as a window of opportunity for investment. Privatization is not a politically correct word but partnership is acceptable. Is PPP privatization by stealth? (Miraftab, 2004) Thus, for example, a powerful lobby for water sector reforms has emerged which finds support from multilateral financial agencies. It is estimated that by 2015 more than 1.2 billion people will be buying water from large multinationals like Suez and Vivendi. Governance systems with PPPs as institutional innovations are being put in place world over. But protests against such a way of delivering an essential service are also occurring. Some of them have forced their governments to scrap such contracts. In spite of world experience, apart from several other cities in India, Delhi has also made its foray into privatization of water supply through the standard mechanism of PPP. The incentive to do so is very clear when the Planning Commission raised its allocation in the Twelfth Five Year Plan from that of the earlier Plan if it went in to PPP mode. The consultant network was presided over by international groups and World Bank was happy to intervene at various stages.

Let me conclude by emphasizing a couple of important issues that need to be scrutinized in greater detail and debate raised in public domain. As I mentioned earlier, jury is still out on these PPP institutions and we need to be careful about their implications for governance and role of state. The present evidence regarding their impact on governance and role of state is alarming and suggests much greater caution. Given that neo-liberalism is an ideological project, issues of legitimacy and accountability of public action become important. The argument for PPPs at one level is that the government does not have the technological and financial resources to provision public goods and services and even if it has them cannot provide them with economy, efficiency and effectiveness. Thus the argument is not only based on lack of resources but perceived failures of government in provisioning them. At another level, there is a new value discourse. The government policies are continuously morphing citizens/residents to consumers and propounding a value discourse about the civic responsibility of the consumer citizens, of fee paying citizens as against free riders. Thus, transport users pay a toll, water consumers pay fees, so does the patient who goes to a hospital. Exclusion is built into the foundation of the system.

PPPs as institutions are symbolic of another trend that governance is taking. Emphasizing private sector managerial practices that aim at economy and efficiency, political demands are being seen as a source of friction in performance of these institutions. So the step towards reform is to insulate them from group pressures and autonomise. Semi-autonomous institutions are now being created to allow for greater professionalism and expertise in decision-making. Setting prices for supply of electricity or water or for patient care in a hospital are, for example, in the domain of such institutions. These bodies are supposed to be independent of the normal hierarchy of the government and escape that political accountability. Great faith is being put on technocrat-guardians and freedom is sought for them to function professionally. If anything, PPP projects should have higher standards of transparency and accountability because a public service is being entrusted in the hands of a private body. However, this is precisely what the government is reluctant to do.

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Kuldeep Mathur has been on the faculty of the Centre for Political Studies, Jawaharlal Nehru University (J.N.U.) and the Indian Institute of Public Administration, New Delhi. He has served as Academic Director of the Centre for the Study of Law and Governance, J.N.U. and Director of National Institute of Education Planning and Administration. His recent publications are: From Government to Governance: A Brief Survey of Indian Experience (2008); Public Policy and Politics in India (2013); and Panchayati Raj (2013).

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The Institute for Studies in Industrial Development (ISID), successor to the Corporate Studies Group (CSG), is a national-level policy research organization in the public domain and is affiliated to the Indian Council of Social Science Research (ICSSR). Developing on the initial strength of studying India's industrial regulations, ISID has gained varied expertise in the analysis of the issues thrown up by the changing policy environment. The Institute's research and academic activities are organized under the following broad thematic areas:

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