1. Introduction

For the past decade or so Public Private Partnerships (PPPs) have become a preferred way of procurement for development projects especially infrastructure such as roads, ports and airports. The latest Draft Land Acquisition, Rehabilitation and Resettlement Bill, 2011 proposes including PPPs within its purview. The draft approach paper for the 12th plan clearly highlights PPPs as the way forward for infrastructure development.

In the context of tourism, currently, there are 105 tourism projects at various stages of development, approval and implementation with more being planned for. An important example being the Tourism Master Plan for the North Eastern Region, in which PPP is planned as the main mode for procurement. Though the number of tourism related PPP projects is significantly lower in terms of quantum of financial resources involved, the fact that tourism has found place in a small list of 10 sectors, itself is significant. The presence of a robust infrastructure is an important prerequisite for tourism to flourish in a region. Therefore, the number of PPP projects in the allied sectors of transportation (air, road and rail) has a bearing on tourism. According to the database as published by the www.pppinindia.com, there are a total of 419 transportation projects.

However, in all these cases, there have been no specific studies on the necessity for a PPP nor its potential impacts on communities living in and around the tourism site. There are several issues with PPPs and its efficacy and therefore the decision of the Government to use this method of procurement is suspect. Some of the more important issues are:

1. PPP as a model is driven by economic interests and return on investment and these are the only criteria for the consideration of the clearance of a PPP project. This has implications on services like health and education, the provision of which are the obligation of the State. With PPP entering these sectors, their costs will no more be affordable to the under-privileged populations and only to those who have the ability to pay the high prices that will be charged. People who are most under-privileged must be able to access these services with dignity and not be at the mercy of the private sector for their basic rights. Therefore the State should not allow the entering of the private sector through the PPP or any other mode into sectors like health, education, water, electricity and food.

2. Need for PPP projects: In the context of tourism, apart from Rajasthan no other states have conducted studies to identify demand drivers for the PPP projects that have been approved/implemented.

3. Impact of PPPs on local communities: No studies on the potential impacts of PPPs on local communities have been conducted prior to the approval of the same, nor have there been studies on the impacts of PPP projects already under implementation.

4. There is problem with all tourism projects being considered as public purpose. Within tourism there are different kinds of projects ranging from the creation of sanitation infrastructure, bus stops, shelters to five star hotels and high end shopping malls. A distinction between the tourism projects as those open to public access and those which only the elite can access needs to be made. While it would be the duty for the State to ensure that sanitation facilities, interpretation centres, public markets, access roads, bus stops, shelters and the like would qualify as public purpose, there is no reason for the tourism departments and tourism development corporations to be involved in the creation of high end projects like 5-star hotels and luxury resorts. These should be left to the private sector and should therefore not be within the purview of PPPs.

Analysis of the tourism projects under PPP show that they are essentially private in nature and are not public access projects, therefore benefit only an elite section of tourists. Of the 105 PPP projects 60 are high end projects including construction of 5-star hotels, golf courses, high-end malls and theatres. About 12 are ropeway projects in the hill regions and the rest are a combination of budget hotels and way side amenities. Andhra Pradesh which has the largest number of PPPs in the tourism sector has also cleared a project for the
construction of a training centre. In fact of the 40 PPP projects in tourism, only 5 are projects which would be accessible for the general public.

5. Lack of documentation on the outcomes of PPP projects: Studies highlighting the implication of PPPs on the changing role of the State and its implication on delivering of basic services, impact on local self governance structures are inadequate. This has skewed the mind set of policy makers into favouring PPPs. The graph below describes the changing role of the private sector based on the PPP modalities. It is clear from this that a PPP project could easily lead to eventual privatisation if not transferred back to the Government. Currently almost all the tourism-related PPP projects are the Build Operate Transfer (BOT) type and the policy draft mentions preference for BOT and Design Build (DB) as its preferred model. Yet as is evident from the graph below, the BOT is only steps away from privatisation which should be avoided at all costs.

Changing Roles and Distribution of Risk and Responsibility in PPP Modalities

Further, issues of accountability have not been adequately covered within the policy draft. Who will be accountable for the implementation of the project, the negative impacts of the projects on communities and non-delivery of the project itself have not been clarified.

The policy draft lacks on the issue of transparency. The policy should include the suo moto principle for information disclosure.

The policy draft is also silent as to whether it will be applicable in retrospect and the modalities of the same.

Finally, no laws including those covering labour, water, energy, environment, land, forest, coasts, local governance should be subverted by their amendment such that they would facilitate the proliferation of PPPs in the country.

Fundamentally, the government needs to acknowledge people and communities' rights to say no to a project, which they believe would have negative implications on their lives. It would be the responsibility of the government to uphold the decisions of the communities.

It is in this context that EQUATIONS submits its response to the National PPP Policy, 2011 (Draft).

I. **Response to the National PPP Policy, 2011 (Draft)**

*(Please refer to the policy draft for the contents of the numbered points mentioned below)*

The policy draft does not mention communities specifically as stakeholders of the PPP projects, and nor is the possibility of communities investing through some vehicle into a PPP project explored. While there is a generic use of the word stakeholders which is not defined in the draft it can be inferred that by stakeholders the draft means the public and private entities and the end users of the product of the PPP project.
There is an excessive focus on the economic and financial aspects of PPPs without taking into account social, environmental and cultural impacts and therefore not mandating a process to ensure that communities are not negatively impacted.

The lack of oversight by a body comprising of elected representatives is glaring. It is suggested that there be a Parliamentary oversight through the Parliamentary Standing Committee of the relevant Ministry.

There is no mention of legislative framework for PPP projects. The following statement should be included in a relevant section:

“Legislations which govern the sector in which the PPP project is being planned and implemented will be upheld through all the stages of the projects. All projects which involve land acquisition, the prevailing state and central land laws will be upheld and no amendments shall be made to these to facilitate the PPP projects.”

1. Defining Public Private Partnerships

1.1 Use of the word public purpose instead of public assets and/or public services

It is suggested that the policy use the term ‘Public Purpose’ instead of public assets and/or public services as there is a common and historical understanding of the same. The Department of Economic Affairs in its 2008 document titled ‘Public Private Partnerships: Creating an Enabling Environment for State Projects” also uses the term public purpose while defining PPPs. Further, PPPs are inherently linked with issues of land and land acquisition. The Land Acquisition Act, 1894 as well as the Draft Land Acquisition, Rehabilitation and Resettlement Bill, 2011, define Public Purpose. However, it is suggested that the definition of Public Purpose as mentioned below be adopted (as has also been suggested to the Ministry of Rural Development for the Land Acquisition, Rehabilitation and Resettlement Bill, 2011)

1.2 (ii) (a) and (b) Use the following definition of Public Purpose

The National Advisory Council in its Draft National Development, Displacement And Rehabilitation Policy (January, 2006) has proposed the following definition for Public Purpose. It is suggested that the same be used in the National PPP Policy.

“Given the challenges of defining public purpose and particularly public interest it is also worth considering a processual? Procedural? rather than a substantive definition.

A project fulfills a public purpose and is in public interest when through a participatory and transparent process it is determined that:

1. The project will benefit the community as a body.
2. The project is directly related to functions of government.
3. The project does not have as its primary objective the benefit of a private interest.
4. The benefits of the project option outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred, and,
5. The public interest thus created outweighs any public interest value accruing from the existing use of the land and everything attached to it.”

Within the framework of the above definition, a 5-star hotel or a golf course would not be considered public purpose and therefore cannot qualify for a PPP project.

1.7 “....While the current initiatives on having a strong public community private partnerships would continue with the growing capacity and maturity of the stakeholders concerned under a PPP arrangement, Government would in due course selectively consider newer models of 'partnerships' which would be simpler, flexible and engage increased participation amongst the contracting parties” (emphasis added)

While the policy mentions initiatives for public community private sector partnerships, these are not evident in the PPP projects that have been implemented until now. In fact given the structure of PPPs, there is no space for community participation, since all the drivers for PPP are to do with Value for Money and return on investments, leaving no space for considerations of people’s participation.
The policy while using the word **stakeholder**, does not define the boundaries of the term. Further, there seems to be a blurring of the definitions of stakeholder and communities. It is assumed that it is only the end users who are impacted by the project (supposedly as beneficiaries). The Policy nowhere takes cognizance of the fact that local communities are one of the first to be impacted by a PPP project for example by loss of land to the project, loss of access to common property resources. It is therefore suggested that a separate section detailing the role of communities from the conception to the monitoring of the project be laid out in the Policy.

The partnerships that have been talked about in this statement are those between contracting parties. Since in PPPs, it is the private sector and the government which are contracting parties and are already in collaboration, the creation of newer models of participation for these 2 entities seems irrelevant. Reiterating the statement above what is needed is the inclusion of communities into the entire PPP process and mechanisms to put this in place needs to be included in the Policy document.

For example in the case of the Shamuka Beach Project in Puri District, Orissa, which is being proposed as a PPP project, the 7 villages on the periphery of the project area will be impacted in terms of access to the sand dunes, which are an important source of livelihood common property resources. The region, which is about 7 kms from the coastline is already facing a crises of potable water and fresh water for agriculture. The development of this project among several other social, cultural and economic impacts will see a worsening of the water situation as tourism is a water intensive industry. Yet no 'partnerships' have been struck with the villagers by the Government.

### 2. Principles governing implementation of Public Private Partnerships

#### 2.1 Overarching objectives of PPPs

The objectives as stated in the Policy only concern themselves with the efficiency of the asset created and the project cycle. However the important aspect of (a) ensuring people's participation and (b) mitigation of the negative impacts of PPPs needs to be included.

For example an initial analysis of PPPs in tourism indicate towards serious social, cultural, environmental and political impacts. Any assessment studies that have been conducted on PPP projects have been on the economic and financial aspects of the projects and not on the impacts. In Annexure 1, we propose a framework for the assessment of impacts of tourism.

Therefore it is suggested that the following be included as 2.1.5:

2.1.5 Ensure that the participation of communities continues as has been mandated by the Constitution through the Panchayat and the Municipalities even in a PPP context.

#### 2.2 Broad Principles for PPPs: 2.2.2 "Ensure that the projects are planned, prioritized and managed to benefit the users and maximize stakeholders' economic returns”

As mentioned earlier in the document, policy draft has an excessive focus on the benefits to private sector, while leaving out community concerns. It is therefore suggested that the following text be used in place of the statement mentioned in section 2.2.2

2.2.2 Ensure that the projects are planned, prioritized and managed to benefit the local communities and users, and ensure that the benefits are defined and experienced from their perspective.

For this to happen, extensive discussions would need to be conducted with communities in and around the regions where the projects are being developed to understand people's aspirations so that benefits as perceived by the project implementers are not thrust upon the people.

In most cases, the communities know of the tourism development plans only when they are being implemented.

#### 2.3.1 Preferred PPP implementation model

It is important that the State not absolve its duty towards providing basic services to the citizens of the country. Therefore, the onus should be on the State to prove that it will not be able to provide for these basic services with robust reasons offered. This should also be a part of the PPP process.
For the tourism sector, this would mean that if the government were to subscribe to the PPP mode of procurement, it should cover only the following or similar projects: bus stops, shelters, civic amenities at tourism sites, wayside amenities, sanitation at tourism sites and budget category hotels.

2.3.2 Enhancing transparency in PPP projects
To ensure transparency of the process not only within official circles but to the general public, all aspects of a PPP project should be open to public scrutiny and therefore remain under the purview of the Right to Information Act, 2006. This should form point (v) of the sub-section 2.3.2.

2.3.3 Auctioning
Under no circumstances should places of natural resources be sites for PPPs. Furthermore, the policy draft mentions a market based price discovery for natural resources, which would be detrimental to both the conservation of the resource and its access to communities who depend upon it for livelihood and other daily life needs as commons and common property resources and traditional rights. Subjecting natural resources to a market price, will not be able to replace these resources for the community.

In fact in the context of tourism in forest areas, the Ministry of Environment and Forests in its (Draft) Guidelines for Ecotourism in and around Protected Areas suggests that no new tourism enterprises may be set up on forest lands.

It is therefore suggested that strict rules be laid out in this regard.

3. The PPP Process

3.3.3 Value for Money Drivers
The very nature of a PPP project ensures the private company earns its profits. It is also true that the public sector also invests a certain sum of money, on which it would like to gain returns. However, as mentioned in the general comments above, there is a great deal of emphasis on the economic and financial aspect of PPPs. Along with ensuring that the benefits are optimum as compared to the costs incurred, an analysis of the parameters defining social and cultural costs need to be equally at the fore in the decision making process of a PPP.

3.4.1 The issue of impacts of PPP projects on communities and the end users is one which cannot be overstated. Along with studies and investigations on the technical, market analysis, financial and legal aspects, studies on social, cultural, economic and governance related costs of PPPs should be undertaken as part of the project development phase.

For example, in the case of tourism-related PPP projects in coastal areas, what would be the opportunity costs with respect to livelihood of coastal communities (fisher people, agricultural communities and others involved in the allied sectors)?

3.4.2 Economic, Financial and Affordability Assessment
a. In keeping with the suggestion for point 3.4.1, it is suggested that the implementing agency evaluate the project not only from the economic perspective but also from the environmental, social and cultural perspectives.

b. In adherence to the above points another section (vii) Social Analysis be added as a mandatory process that the implementer would need to undertake before a project is finalised.

3.4.3 (ii) “However, risks that the public sector is more competent to mitigate/bear in the normal course of its business such as ensuring availability of unencumbered land for the project or obtaining mandatory clearances of regulatory authorities prior to commencement of the project, would be retained by the public sector.”

Unless a project is proved to be a public purpose one, a PPP cannot be entered into. In the event that the project is proved to be in public interest, then certain roles would be played primarily by one party or the other. However risks and mitigation of risks are a responsibility, which must be equally borne by all the partners.

In the event that the project is not proved to be in public interest, it would not come under the purview of this policy and would need to go through the process as outlined in the relevant central and state land laws.
3.6 Phase 4: PPP contract management and monitoring stage

This section in the policy is weak. While the section speaks about the capacities of the contract manager, the implementing agency and dispute mechanism, what it fails to do is put in place a robust process of monitoring and regulation, with clear indication of the accountability flow and the penalty in case the project has violated the contract or the law.

Further, an overall mechanism for oversight needs to be put in place. It is suggested that PPP projects fall under the Parliamentary oversight through the Parliamentary Standing Committee.

3.8.5 “All such negotiations and contractual modifications would be subject to audit, including stage audit, by the authorities.”

Social audit should also be considered to ensure that the people who have been impacted by the project and the users/beneficiaries are part of the monitoring phase.

4. Enabling Frameworks

4.2.4 “The government, where necessary and appropriate, would consider levy of user fees to generate financial resources for rehabilitation or redevelopment or construction or replacement of project assets and their ongoing operations and maintenance in order to provide good quality public assets and/or related services user fees to generate financial resources”

Considering that PPPs are not subject to a decision making process within the parliamentary and state legislative framework, and that there is no public discussion and debate on the projects taken up, to transfer the burden of raising resources should not be passed on to the people.

A user fees not higher than the fees charged prior to the PPP project be levied on the people. Given that one of the important reasons for the introduction of PPP is the capacity of the private company to raise resources, which the public entity finds itself unable to, this burden cannot be shifted to the people.

4.3 Land

While the government might facilitate in the identification of the land, the private entity should pay the owners of such land, its current market value. While doing so, the government should ensure compliance of all laws and procedures stipulated by the relevant sector. It should also ensure that the rights of the communities are not violated and that the private entity in no way coerces the people in selling their land.

4.4 Capacity Building Measures

Along with what is mentioned in the Policy within this section, the Government should also build the capacities of people in the administration as to the potential impacts of PPPs. This would ensure that along with economic and financial drivers, it would be people and the impact of the project on the people which would eventually become the criteria for motivation of granting permissions for a PPP project.

4.5 Participation and Communication Mechanisms

The mention of participation here seems like tokenism, considering that there has been no mechanism evolved in the earlier sections to elicit the same. In fact it is important to note that participation of people has been mentioned in the chapter “Enabling Frameworks” and therefore people’s participation is seen more as a way of reducing protests of the people against the project, rather than creating an open space wherein people are able to participate in the decisions concerning their life.

In fact, there is no mention of the Panchayats or the Municipalities which are key governance structures at the local level. The Policy in itself seems to violate these very important legislations.

4.6 “In due course, a company in PPP mode may be created by Ministry of Finance, with both private and public sector shareholders, which will provide support to the PPP Cell in effective discharge of its responsibilities”
There are several problems with the creation of the such a company. In the policy draft there is no mention as to why it is seen that some company would (a) be needed and (b) would need the private sector to participate. The PPP Cell has been assigned a very important role right from identifying and conceptualizing PPP projects to monitoring them. It will be detrimental to governance in the country if a company with private sector shareholders is formed and which would support the PPP Cell. Again, this seems like a back door way of ensuring that the private companies would be able to ensure policy and implementation on PPP projects in the country.

5. Institutional & Governance Mechanism

5.1.2 Role of PPP cells
As part of its role of identifying and conceptualizing PPPs, the Cell should also be assigned the duty to conduct impact studies of the projects.

5.2.1 Decision Making Process of PPP

It is interesting to note that the Public Private Partnership Approval Committee (PPPAC) which is reposed with the responsibility of decision making on the granting of permissions for PPPs does not have representation of the elected representatives like the Minister of the relevant department or the member of the local governance body on the Committee.

The composition of the PPPAC should be changed to include the following:
1. Minister of Finance
2. Minister of the relevant Ministry/Department
3. In case the PPP project is localized, elected representatives from the local governance body

5.2.2 “The intent of the clearance process is to ensure that the projects that are bid out are commercially robust, the provisions in the contract document safe guard user and public interest and the contingent liabilities of the Government are capped.”

This is a rather limited view of the reasons for clearances. Apart from the commercial viability of the project, the clearances should fundamentally deliberate on the need and impacts of the project, once the commercial viability receives a positive assessment. Therefore the statement should read as follows:

“The intent of the clearance process is to ensure that once the projects are positively assessed for commercial viability and the contingent liabilities of the Government are capped, serious analysis of the contract document in terms of the need of the project and extent of negative impact of the project be determined, so as to mitigate the same and in the event that such mitigation is not possible, the clearance not be issued”

5.4 Regulatory Mechanism: “The regulation would be through independent (multi-sectoral, where applicable) regulators, wherever there is no sector specific regulator, regulation would be through contractual arrangement”

Over the past 2 decades, private sector participation in key sectors has increased tremendously. The Government has already absolved itself of responsibility and accountability towards the delivering of the basic services of food security, clothing, housing, health, education and livelihood opportunities. The only role that it has retained is that of regulation. The mention of an independent regulator who is contracted is most undesirable and takes all forms of control except the formation of legislation out of the Government.

It is suggested that this statement be removed from the policy draft and a detailed regulatory process be evolved.

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