Course title: Legal Aspects of Bidding and PPP			
Course code: MPL 129	**No. of credits: 3**	**L-T-P distribution: 30-15-0**	**Learning hours: 45**
Pre-requisite course code and title (if any):			
Department: Centre for Post Graduate Legal Studies			
Course coordinator (s):Dr. Kavita		**Course instructor (s): Mr. Ramesh Jha**	
Contact details:			
Course type	Core		
Course offered in	Semester 2		

Course Description:

The course is designed to introduce students to the basic legal concepts of competitive bidding and PPP projects. It will also identify the financial and other risks related to bidding and PPP projects as well as challenges in the execution of such contracts.

Course objectives:

1. Apprise students about the basic principles of competitive bidding and PPP projects
2. Discuss the risks and benefits associated with bidding / PPP projects
3. Case law studies on important issues related to bidding / PPP projects
4. Discuss the role of governments & regulators

Course Contents:

Module	Topic	L	T	P
1.	**Introduction to Competitive Bidding** Understanding the concept of bidding, basic rules applicable to bidding, its merits and demerits, Bidding vs Bilateral Contracts Legal Foundations for Bidding: Principles of contract law; legal standards in procurement; Transparency and fairness in bidding and Overview of e-procurement laws Historical and Policy Background of PPP Case discussion	8	4	
2.	**Risks associated with bidding and execution of contracts** Introduction to assessment of risks for purposes of bidding, risks related to execution of contracts, challenges in long term contracts – how to address changes and alterations in circumstances; change in law and force majeure clauses, termination and step in rights; dispute resolution Dispute Resolution Mechanisms in PPPs; Legal provisions for arbitration, mediation and conciliation; Judicial review of PPP projects; Case law analysis: PPP disputes in India and abroad; Modern BITs and the 2015 Indian Model BIT; Investor-state dispute settlement (ISDS) Mechanisms International Arbitration in PPP Projects: Key arbitration institutions and their rules; Enforcement of arbitral awards under international conventions; Cross-border disputes and jurisdictional issues; Role of Permanent Court of Arbitration; ICSID Convention		4	

	Case study: Review of bid documents for different projects			
3.	**Introduction to PPP projects** Understanding the concept of PPP projects, its merits and demerits, Role and duty of PPP developers, applicability of RTI Act, Financing models for PPP projects PPP Models: Legal Framework in India; The PPP guidelines and relevant national laws PPP in various infrastructure sectors in India e.g. Healthcare, Ports, Electricity, Railways etc. International Legal Frameworks on PPPs: United Nations Commission on International Trade Law (UNCITRAL) Model Legislative Provisions; World Bank and other international institutions' guidelines on PPP Case discussion	8	4	
4	**Role of government and regulators** Role of governments, courts and regulatory bodies in relation to PPP projects – risk of governmental and judicial interventions Understanding the Regulatory sphere in India- Role of Competition Commission of India Impact of environmental laws and regulations on PPP projects Reforms required in PPP Models in India Financing and Financial Law in PPP Projects; Legal structures for PPP project financing; Key financial institutions and their roles; Legal issues related to foreign investments in PPPs Case discussion	6	3	
Total		**30**	**15**	**0**

Evaluation procedure:

	Weightage (%)
• Class participation	10
• Term Paper	25 (Modules 1-4)
• Presentation	25 (Modules 1-4)
• Final examination	40 (Module 2 &4)

Learning outcomes :

1. Able to understand legal issues related to competitive bidding & PPP projects (Modules 1, 2&3)
2. Appreciate business and regulatory risks related to PPP and infrastructure projects (Module 4)

Suggested Readings :

1. Banerjee, A. (2016). *Judicial Review of PPP Projects in India: Case Law and Analysis.* Indian Journal of Legal Studies.
2. Bhat Sairam, Public Private Partnership in India – A Sector Analysis, available at https://ceerapub.nls.ac.in/wp-content/uploads/2019/05/NLSIU-Book-Series-5-Public-Private-

Partnership-in-India.pdf
3. Brower, C. N., & Schill, S. W. (2008). Regime change in international investment law: From bilateralism to multilateralism. In A. Reinisch (Ed.), Standards of investment protection (pp. 63–90). Oxford: Oxford University Press.
4. Desai, M. (2012). *Dispute Resolution in Indian Public-Private Partnerships: The Legal Framework.*
5. Journal of Indian Business Law.
6. Dolzer, R., & Schreuer, C. (2012). Principles of international investment law (2nd ed.). Oxford: Oxford University Press.
7. Gandhi, J. C. (2001). Law Relating to Public-Private Partnerships in India. Universal Law Publishing.
8. Gómez, K. F. (2018). Rethinking the role of ISDS in PPP projects. Journal of International Arbitration, 35(4), 421–446.
9. Gopalakrishnan, R. (2015). E-Procurement in India: Legal and Regulatory Framework
10. ICSID Review – Foreign Investment Law Journal. (n.d.). Oxford University Press. Retrieved from https://academic.oup.com/icsidreview
11. Investment Treaty News (ITN). (n.d.). Retrieved from https://www.iisd.org/itn/
12. Journal of World Investment & Trade. (n.d.). Brill. Retrieved from https://brill.com/view/journals/jwit/jwit-overview.xml
13. Kumar, A. (2017). Infrastructure Development through PPP in India: A Legal Perspective.
14. Mathur, N. D. (2012). Public-Private Partnerships in Infrastructure: Indian Legal and Policy Framework. Indian Journal of Law and Public Policy.
15. Newcombe, A., & Paradell, L. (2009). Law and practice of investment treaties: Standards of treatment. Alphen aan den Rijn: Kluwer Law International.
16. NITI Aayog, 'Rebooting Public Private Partnership in India' (22 November 2017), available at https://www.pppinindia.gov.in/report/Report%20of%20the%20Committee%20on%20Revisiting%20&%20Revitalizing%20the%20Public%20Privsaate%20Partnership%20Model%20of%20Infrastructur e%20(Kelkar%20Committee%20Report).pdf_1685171086.pdf
17. Overview of PPP experience – PPIAF's Toolkit for Public Private Partnership in Roads & Highways [https://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highwaystoolkit/6/pdf-version/1-
18. 21.pdf)
19. Parthasarathy, S. (2010). Legal Issues in Public Procurement in India: Recent Developments. Journal of Indian Law Institute.
20. Poulsen, L. N. S. (2015). Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries. International Relations Journal, 29(1), 120–142.
21. Public Private Partnership Projects in India: Compendium of Case Studies, June 2015
22. Public Private Partnerships (PPP) in Infrastructure Projects - Public Auditing Guidelines, Comptroller & Auditor General of India, 2009
23. Public-Private Partnership Legal Resource Center (PPP LRC). (n.d.). Retrieved from https://ppp.worldbank.org/
24. Raghavan, S. (2013). Regulatory Mechanisms for PPP Projects in India.
25. Rao, P. S. N. (2018). Public-Private Partnerships in Infrastructure: An Indian Perspective.
26. Report of the Committee on Revisiting & Revitalizing the Public Private Partnership Model of Infrastructure (Kelkar Committee Report), November 2015
27. Saxena, R. S. (2016). Compliance Challenges in Public Procurement and PPP Models in India. Journal of Regulatory Affairs.
28. Schill, S. W. (2009). Fair and equitable treatment under investment treaties as an embodiment of the rule of law. International Law and Politics, 13(1), 1–33.
29. Singh, B. (2015). Risk Allocation and Legal Challenges in PPP Contracts in India. Indian Law Review.
30. Singh, K. P. (2014). Public Procurement and Competition Law in India.

31. Sornarajah, M. (2021). The international law on foreign investment (5th ed.). Cambridge: Cambridge University Press.
32. Thakur, R. (2011). Public-Private Partnerships in India: A Legal Guide. Eastern Book Company.
33. Transnational Dispute Management (TDM). (n.d.). Retrieved from https://www.transnational- dispute-management.com/
34. Van Harten, G. (2007). The public-private distinction in the international arbitration of individual claims against the state. International and Comparative Law Quarterly, 56(2), 371–393.
35. Vijay Vir Singh and Siddharth Mitra, 'Regulatory Management and Reform in India', Background Paper for the OECD, available at www.oecd.org/gov/regulatory-policy/44925979.pdf
36. Wälde, T. W. (2005). The "umbrella clause" in investment arbitration. The Journal of World Investment & Trade, 6(2), 183–236.
37. Yannaca-Small, K. (Ed.). (2010). Arbitration under international investment agreements: A guide to the key issues. Oxford: Oxford University Press.

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Additional information (if any):

Student responsibilities:

Attendance: At-least 75% attendance will be necessary to be able to appear for the final exam.

Course Revised By- Dr Kavita, Assistant Professor (Law), CPGLS, Department of Policy and Management Studies

Course Reviewers:

1. Mr Swapnil Verma, Chief Manager (Law) & Legal Head at Central Transmission Utility of India Ltd./POWERGRID, swapnilverma.adv@gmail.com.

2. Public-PrivateMr Akash Jandial, Advocate, Delhi High Court and Supreme Court, India.