

Dispute in Construction and Their Settlement - A Review

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-----ABSTRACT-----

Are some construction projects more prone to contract disputes than others? If so, can these projects be identified before construction begins? Prevention and Resolution Task Force to answer these questions. This research analyzed the effect of different project characteristics on the occurrence of contract disputes explained by different researchers. Conflicts may be considered in three levels; level one may be viewed as intrapersonal conflict that is the conflict that takes place inside the individual. Level two is interpersonal conflict the conflict experienced between individuals in the same group or unit for example coworkers, roommates, unit members and etc. Such clashes exist whenever individuals interact or come composed to finish a common goal or detached. This paper explains all work carried out by different researchers on conflicts in construction industry.

Date of Submission: 17-10-2018

Date of acceptance: 03-11-2018

I. INTRODUCTION

The number and complexity of contract disputes have increased dramatically in recent years. At the same time, the delays and costs associated with litigation have become more significant. This section provides an overview of dispute resolution methods commonly used. The increasing trend to alternative methods of resolving disputes suggests a considerable dissatisfaction with the traditional litigation process, at least in certain types of construction cases. However, it must be emphasized that litigation is sometimes, although not always, still the best solution to the parties' problems.

Construction project are an important element of any country's infrastructure and industrial growth. As part of the process of standardization and improving efficiency in the construction sector, harmonized bidding conditions and regular bidding documents for domestic construction contracts have been developed and distributed to all Government agencies and public sector organizations as guidelines. There is necessity for proper dispute resolution mechanism in the construction division. A considerable amount of money is locked up due to disputes between contractors and clients, leading to cost and time overruns.

Construction contracts provide rise to disputes of unusual difficulty and complexity even by evaluation with other types of litigation. The performance of many construction contracts run over much longer periods than most other forms of commercial contract, with potential scope for disagreement and financial disagreement arising constantly during the construction period, and with large sums of money and cash flow pressures concerned on both sides. There is plenty chances of disputes or difference of opinion from the very inception of entering into the contract and commencing the work because consistently both the parties have to meet with reciprocal obligations on either side one after the other and a single case of default is satisfactory to upset the balancing pendulum and the whole development, programming enhance targeted schedule of completion of work. The employer wants to reduce the expenses in order to keep up the economic viability of the project within its restrictions, tries to bring down the expenses whereas the contractors universally called 'builders' who invests large amounts by way of establishment cost in the form of machinery, materials, tools and plants as also onsite and offsite staff and at times own testing laboratories and research wings, planning and drawing wings, when confronted with unexpected situations where variations from the scope of the contract or undue delays by the owner which were not within the consideration of the parties at the tendering stage, unless remedied immediately, would upset the planning and programming and financial viability, enter into prolonged correspondence leading to dissimilarity of opinion and disputes which ensue in settlement.

II. REVIEW OF RESEARCH PAPER

Dr. Jur.Tunay KÖKSAL [2005], Construction Industry needs alternative dispute settlement mechanisms which are able to solve rapidly the disputes relating to international construction projects especially, even in the construction site as far as they emerge. A modern tender system should begin with an efficient evaluation of the pre-qualification of applicants, and proceed with a tender procedure based on high

quality tender documents, and carry on with the balanced conditions of contract which fairly distribute possible risks of future between the employer and the contractor.

Edwin H.W. Chan and Henry C.H. Suen [2005], Purpose – Unfamiliar with the Chinese culture and ways of doing business, foreign architects/engineers/contractors firms will encounter differences with the local parties. With reference to the characteristics of Chinese culture on disputes, this paper studies the problem areas of dispute and of resolving disputes in international construction projects in China. The objectives are to examine the fundamentals of Chinese culture and ways of doing business, examine the characteristics of international projects and investigate any differences in the dispute problems arising from China International Projects, identify the most popular dispute resolution mechanism for international projects in China and recommend possible ways to reduce and resolve disputes of these projects.

K.W. Chau [2007], Resolving construction disputes using an adversarial approach is considered to be in opposition to the maintenance of a harmonious relationship between two parties. The modern arbitration process may emulate the litigation proceeding leading to delay and cost escalation. During the past decade, the Hong Kong Government has implemented a mediation clause as an alternative mode for settlement of construction disputes. In this paper, the experience and insight into resolving construction disputes by integrating mediation and then arbitration in Hong Kong are highlighted. The state-of-the-art modern mediation process and its philosophical origins are reviewed. The shortcomings of the present system are pinpointed. The success of the adjudication now practised in the United Kingdom may suggest that there is a place for another process of dispute resolution, which may help improving the situation. The prospect of the proposed mediation/adjudication and then arbitration mechanism is discussed with particular reference to the construction industry in Hong Kong.

K.C. Iyer, N.B. Chaphalkar, G.A. Joshi [2008], Most of the construction projects are executed through contracts which are generally not easy to comprehend even by professionals. With advancement in technology and mammoth requirement of infrastructure in developing countries like India, there has been increase in size and complexities in the nature of projects. This gives rise to further ambiguities in the prevailing contract forms eventually making contract forms more complex and difficult and causing adversarial impacts such as increase in number and frequency of claims and disputes besides time and cost overruns. To overcome the worsening scenario, it is essential to develop a system that can assist the contract administrators to understand and evaluate worth of their claims prior to taking it to litigation. An attempt has been made to devise a rule-based expert system to achieve this objective with a limited scope of disputes arising out of Time Delay and Extension in Indian Construction Contracts.

C. Bvumbwe, D.W. Thwala [2011], This study assessed the dispute resolution methods used in the South African construction industry. Arbitration, adjudication and mediation are the most frequently used dispute resolution methods in the construction industry. A literature review focused on arbitration, adjudication and mediation in the construction industry. The research concluded that for alternative dispute resolution to be effective in solving disputes in the local construction industry, mediators, arbitrators and adjudicators with knowledge of the construction industry should be appointed.

Ikechukwu Ikea Chinyere [2011], This paper is concerned with issues relating to procedures and arrangement dispute resolution and management in international construction development projects. The paper highlighted a dispute resolution and management approach to international development projects based on the context of Chinese administration arrangement, whereby dispute management, dispute arbitration and procedures are discussed accordingly. Thus, this paper also illustrated a valuable and efficient dispute resolution technique together with other issues relating to arbitrators and local government authorities.

Mr. Rajiv Mohite, Dr. A. C. Attar, Mr. D. S. Patil [2013], The work undertaken to assess, Jalswarajya schemes in Sangli district resulted with reasons of scheme failures, one of the reason for failure was high electrical charges for pumping water. This study was undertaken to provide an alternative solution to the same, one alternative we thought off was solar pumps instead of electrical. This paper highlights the benefits and cost analysis of using solar pumps, with case study details of application and calculations are leistered in this paper.

Chaitanya Khekale, Nityanand Futane [2013], Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise result in complex claims and disputes. This paper provides an introduction to the claim management and dispute resolution techniques that are frequently encountered in the construction industry. Claim is a legitimate request for achievement of a contractual milestone or additional compensation on account of a change to the contract, if these claims made by contractor are not managed clearly; it gives rise to a disagreement or argument over the validity or quantum of a claim known as disputes.

Sigitas Mitkus, Tomas Mitkus [2014], The article analyses the causes of conflicts arising between client and contractors in the construction industry. An analysis of articles on this topic has revealed that most of

contemporary authors refer to externally visible signs of conflicts as to the causes thereof. The authors of the present article look at the conflict in construction in a different light – from the aspect of communication.

Omkar Ashok Pawar, Rahul S.Patil [2014], Are some construction projects more prone to contract disputes than others? If so, can these projects be identified before construction begins? This paper describes research conducted with the CII Dispute Prevention and Resolution Task Force to answer these questions. This research analyzed the effect of different project characteristics on the occurrence of contract disputes. This paper explains the project characteristics that were evaluated, and the conclusions that we made from this analysis.

A. A. Elziny, M. A. Mohamadien, H. M. Ibrahim, M. K. Abdel Fattah et.al. [2014], The objective of construction project stakeholders is the completion of a project that meets the objectives of time, cost and quality. However, the construction process is often fraught with disputes over the interpretation of construction documents, existing conditions, the legitimacy of variations, timely payments, etc. The best technique to resolve a dispute is how to manage it carefully to reach an appropriate solution. The aim of this paper is to evaluate the prevailing dispute handling methodology process and consequently to recommend possible Alternative Disputes Resolutions (ADR) methods.

III. CONCLUSION

The study until now was performed on predicting the system Problems which leads to dispute and parties involved in the dispute used to manage the construction work on site. Many researchers derived different methods to resolve the dispute and increase the effectiveness of work on site and ultimately deal with the cost effective project. The conclusion of dispute is delaying in work which influences the cost of project this leads to inflation in estimates cost of project. Many methods are mentioned to solve the dispute but in India rules and laws are prepared for the same purpose. This leads to find the appropriate method to be followed by the parties to solve dispute.

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