

A REVIEW ON CAUSES OF DISPUTES IN CONSTRUCTION INDUSTRY

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***ABSTRACT:** Disputes have become an endemic feature of the Indian construction industry. If they are not resolved promptly they can escalate causing schedule delays, lead to claims that require litigation proceedings for resolution and destroy business relationships. The competitive nature and contractual complexity inherent within construction can aggravate the incidence of disputes. Research over the last two decades has revealed that factors such as scope changes, poor contract documentation, restricted access, unforeseen ground conditions, and contractual ambiguities are contributors of disputes. While this is widely known, disputes still prevail over such issues. One of the greatest challenges facing the construction industry during the last couple of decades has been how to resolve disputes arising in construction contracts' in a timely and efficient manner with minimal financial costs, without hindering the pre-planned end results on a construction project.*

***Keywords-** Dispute, Construction, Contract, Causes Of Dispute*

INTRODUCTION

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.

During the last two decades the Indian construction industry has been in an intense period of introspection, specifically examining how it can improve its performance and productivity. Time and cost overruns in construction projects has become a ubiquitous feature of the industry. Significant factors that have been identified as contributing to time and cost overruns in Indian construction projects are rework, variations, incorrect design and incomplete documentation, and late authority approvals. As a result of such issues arising in projects, conflict and disputes may occur, which can lead to the disruption of construction schedules, increased project costs, and even adversely influence relationships between project participants. If a dispute is not resolved promptly, then it may escalate, and ultimately require litigation proceedings, which can be extremely costly for the parties concerned. Research into determining the causes of disputes has reached saturation point; consistently the same variables are

identified and continue to manifest in projects. Because most of the studies undertaken have been based upon questionnaires or derived from case law, the factors identified lack contextual meaning. For example, poor communication has been identified as a cause of disputes. Simply improving communication practices by improving information flow with technology or using Computer-Aided-Design will not reduce per se the incidence of disputes in construction. Fundamentally, work processes, policies, and procedures as well behaviors need to change in concert if disputes are to be reduced in construction.

CONFLICT, CLAIM AND DISPUTE

A plethora of definitions as to what constitutes a dispute can be found in the normative literature. The terms conflict, claim and dispute are often used interchangeably, but their meanings are very different.

- Conflict – “serious disagreement and agreement about something important” (Collins, 1995). Willmot and Hocker (1998) , on the other hand, provide a detailed definition of conflict as “an expressed struggle between at least two independent parties who perceive incompatible goals, scarce resources, and interference from other achieving those goals”.
- Claim – “for the assertion of a right to money, property or remedy”(Powell- Smith and Stephenson, 1993). Likewise, Semple et al. (1994) define a claim as “a request for compensation for damages incurred by any party to a contract”.
- Dispute – “any contract question or controversy that must be settled beyond the jobsite management” (Diekmann and Girard, 1995).

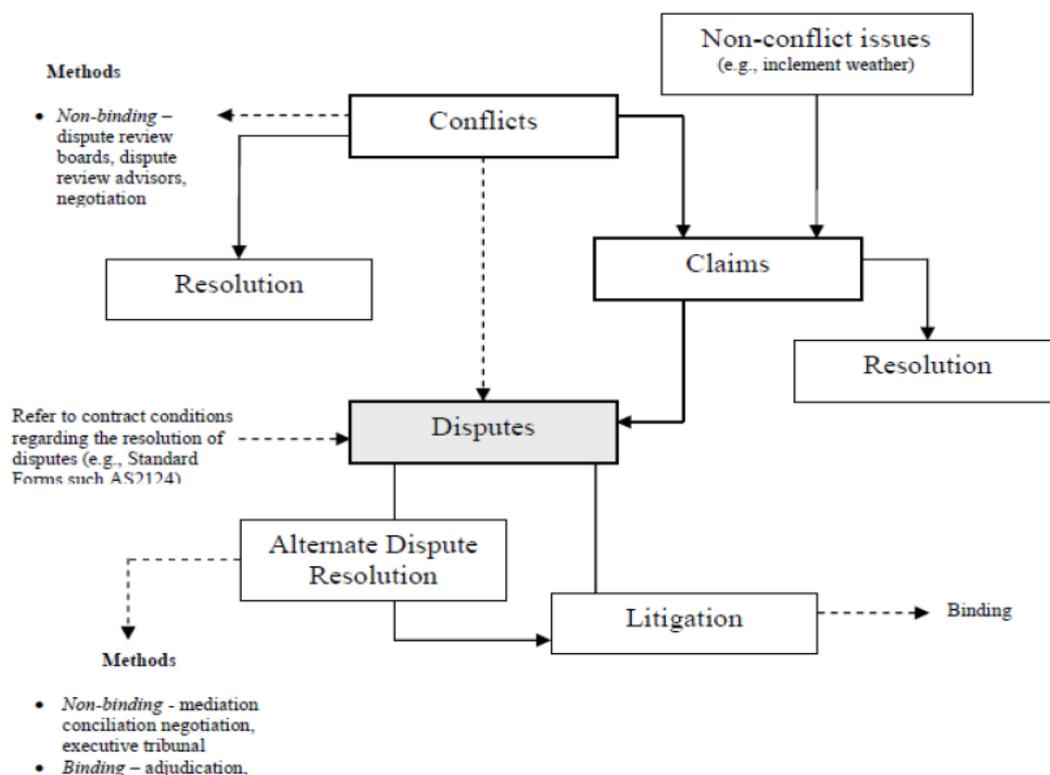


Figure 1: Conflict, claims and disputes
(Adapted from Kumaraswamy, 1997)

WHY DISPUTE ARIES IN CONSTRUCTION

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.

TYPES AND CAUSES OF DISPUTE

✓ *Construction Related Causes of Dispute:*

All of the planning, designing is translated into a physical entity through execution. And it is why the construction phase of a project is usually the most troublesome for project participants. The problems are exaggerated more due to vastly differing practices among different project participants.

✓ *Financial/Economical Causes of Disputes:*

Finance is one of the most important aspects of business management. In the context of construction business, "Project finance" refers to the financing of the project that is dependent on the project cash's flows for repayment as defined by the contractual relationships within each project whereas the financial function plays a significant role in ensuring that company objectives are compatible with its resources. For this reason the disputes have a monetary trait attached to it and it is of such magnitude which none of the project participant is ever ready to absorb.

✓ *Management Related Causes of Disputes:*

Effective management of projects is becoming increasingly important for any type of organization to remain competitive in today's dynamic business environment due to pressure of globalization. Through application of construction management tools and techniques and observing a sound project management system, majority of the causes of disputes can be avoided thereby reducing the chances that any dispute arises in the first place and if such thing come about it does not escalate to such a level that it is converted into a major conflict or breach of contract.

✓ *Contract Related Causes of Disputes:*

The business environment is full of agreements between businesses and individuals and construction is no exception. While oral agreements can be used is is more appropriate to opt for formal written contracts when engaging in operations. Written contracts provide individuals and businesses with a legal document stating the expectations of both parties and how negative situations will be resolved. Contracts also are legally enforceable in a court of law. Contracts often represent a tool that companies use to safeguard their resources. If there are some flaws in the formulation of contract documents, ambiguous language of the contract can be a cause of dispute. These causes and many others relevant to the domain of contract have a very high potential to be the source of diverse types disputes.

FACTORS CONTRIBUTING TO DISPUTE

According to previous studies, following are the various factors of dispute in the construction industry.

Table: 1 factors contributing to dispute

Sr No	Factors Contributing to Dispute
1	Errors in drawings
2	Defective specifications
3	Improper Contracting practices such as Contract familiarity/client contracting procedures
4	Bid development errors such as Estimating error
5	Payment and budget
6	Performance
7	Delay and time
8	Lack of Quality
9	Lack of Administration process
10	Misunderstandings between client, contractor, owner etc.
11	Unpredictability
12	Unrealistic expectations by parties
13	Ambiguous contract documents
14	Poor communications between project participants
15	Lack of team spirit
16	Failure of participants to deal promptly with changes
17	unexpected outcomes
18	Bid review of contracting officers
19	Faulty negotiation procedure of contracting officers
20	Knowledge of local statues of contracting officers
21	Scheduling of contracting officers
22	Change order of project management procedure
23	Pre-award design review of project management procedure
24	Pre-construction conference proceedings of management procedure
25	Quality assurance of project management procedure
26	Faulty Scheduling of site management process
27	Improper Project management procedures
28	Lack of quality control

CONCLUSION

The critical review undertaken in this paper covers various definitions of conflicts & disputes. The attempt has been made to differentiate between conflicts and disputes. Construction projects are big budget endeavors, It is difficult, if not impossible, to completely avoid construction conflicts. However, minimizing their impact brings many advantages, such as reducing contractual problems, educating and training construction personnel to increase their ability to resolve problems, and establishing alternative dispute resolution mechanisms. In construction projects, an effective and cooperative project team owner, contractor, and consultant_ can minimize the effects of large complex problems. An organizations' ability to solve problems and agree on sharing responsibility depends on the parties' intentions, behavior, relationships, and decision processes. The key factor is to try to encourage all parties to cooperate rather than compete on projects.

REFERENCE

- [01] Acharya, N., Lee, Y. and Im, H.(2006) Conflicting factors in construction projects: Korean perspective, Engineering, Construction and Architectural Management, vol. 13, no. 6, pp.543-566.
- [02] Bresnen, M. and Marshall, N. (2000) Partnering in construction: a critical review of issues, problems and dilemmas, Construction Management an Economics, vol. 18, pp. 229-237.
- [03] Brown, H. J. and Marriott, A. L. (1993) ADR: Principles and Practice, Sweet and Maxwell, London.
- [04] Chase, W. H. (1985) Issue Management: Origins of the Future, Issue Action Publications.
- [05] Checkland, P. B. and Scholes, J. (1999) Soft Systems Methodology in Action, 2, John Wiley & Sons Ltd, London
- [06] Colin, J., Langford, D. and Kennedy, P. (1996) The relationship between construction procurement strategies and construction disputes, CIB W 92 North meets South, Durban, South Africa.
- [07] Dearlove, G. (2000) Court ordered ADR: sanctions for recalcitrant lawyer and party, The Australasian Dispute Resolution Journal, p 12.
- [08] Diekmann, J., Girard, M. and Abdul-Hadi, N. (1994) Disputes potential index: a study into the predictability of contract disputes, Construction Industry Institute, Source Document 101
- [09] Dispute Causation In Construction Projects, Manvendra Sinha 1, Dr. A. S. Wayal 2
- [10] Fenn, P., Lowe, D., and Speck, C. (1997). Conflict and dispute construction. Construction Management and Economics, **15**, pp.513-518
- [11] IOSR Journal of Mechanical & Civil Engineering (IOSR-JMCE) ISSN: 2278-1684, PP: 54-58.
- [12] Love, P.E.D., Irani, Z and Edwards, D. (2003). Learning to reduce rework in projects: analysis of firms learning and quality practices. Project Management Journal **34**(3) pp.13-25.
- [13] Mayer, J.D. and Salovey, P. (1997). What is emotional intelligence? In P. Salovey, and D. Sluyter (Eds.). Emotional Development and Emotional Intelligence: Educational Implications. Basic Books, NY.

- [14] Mitropoulos, P. and Howell, G. (2001). Model for understanding preventing and resolving project disputes. *ASCE Journal of Construction, Engineering and Management*, **127**(3), pp.223-231.
- [15] Poh, K.C. (2005). *The Causes of Construction Disputes on Client Organisations*. Faculty of Civil Engineering, University technology Malaysia.
- [16] Rhys Jones, S. (1994) How constructive is construction law? *Construction Law Journal*, 10(1): pp 28-38.
- [17] Semple, C., Hartman, F.I. and Jergeas, G. (1994) Construction claims and disputes: causes and cost/time overruns, *Journal of Construction Engineering and Management*, 120(4): pp 785-795
- [18] Vorster, M. (1993) *Dispute Prevention and Resolution*, Source Document 95, Construction Industry Institute, Austin Texas.