

Effective Management of Construction Disputes in India

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ABSTRACT

Disputes are often the major cause behind delay in construction projects. Resorting to the legal system to resolve disputes is often impractical due to the associated time and cost constraints, adversely impacting the progress of construction projects. A more effective alternative for dispute resolution is arbitration.

Recognizing the importance of preventing disputes, this research advocates for novel mechanisms tailored for the Indian construction sector. These proposed mechanisms encompass the appointment of a relationship facilitator, the establishment of a joint office or good office, and a combination of both. The central aim of introducing these mechanisms is to enhance communication between key stakeholders in construction projects, namely the client (promoter) and the contractor (developer). By fostering better communication, the escalation of claims or issues into disputes can be mitigated, ensuring the smooth completion of projects. Importantly, the applicability of these dispute prevention mechanisms extends beyond the construction sector, making them versatile tools for dispute avoidance in various industries.

Keywords: *Relationship Facilitator; Joint Office; Arbitration; Dispute Resolution; Dispute Prevention; Construction.*

INTRODUCTION

Conflicts commonly arise in the construction sector, posing substantial negative repercussions on projects in terms of expenses, missed opportunities, and delays. Technical glitches are a major contributor to the multitude of disputes within the construction industry, manifesting at various stages of a project's development and completion. Failing to promptly address conflicts can trigger a domino effect on a project, resulting in cost overruns, time delays, and cash flow issues. Swift resolution is crucial to mitigate these adverse impacts.

Several factors contribute to disputes in the construction industry. These include:

1. **Technical Issues:** Problems related to design, specifications, or construction methods can give rise to disputes. Deviations from initial plans or errors in technical aspects often lead to disagreements.
2. **Contractual Ambiguities:** Unclear or ambiguous terms in contracts, including scope of work, responsibilities, and payment terms, can be a significant source of disputes between parties involved in a construction project.
3. **Project Changes:** Changes in project requirements, design alterations, or unexpected modifications can lead to conflicts over additional costs, delays, and responsibilities.
4. **Payment and Financial Disputes:** Issues related to payment delays, disputes over payment amounts, or financial discrepancies can strain relationships and escalate into disputes.
5. **Quality of Work:** Disagreements may arise when there are concerns about the quality of work delivered. Differences in interpretation of quality standards can lead to conflicts between contractors and clients.
6. **Delays and Timelines:** Project delays, whether caused by unforeseen circumstances, poor planning, or disruptions, can lead to disputes over timelines and associated penalties.
7. **Communication Breakdown:** Ineffective communication between project stakeholders, including owners, contractors, and subcontractors, can result in misunderstandings, mistrust, and ultimately disputes.
8. **Regulatory Compliance:** Non-compliance with local regulations, building codes, or environmental standards can lead to disputes, especially if it affects project progress or safety.

9. Resource Allocation: Conflicts may arise over the allocation of resources, such as labor, materials, and equipment, especially when there are shortages or competing demands on resources.

10. Site Conditions: Unforeseen site conditions, such as soil instability or environmental challenges, can lead to disputes over the responsibility for additional costs and delays.

Understanding and effectively managing these components are crucial for minimizing disputes and fostering successful construction projects. Clear communication, detailed contracts, and proactive issue resolution mechanisms can help mitigate the impact of these factors.

SIGNIFICANCE

Present research holds significance for the following reasons:

The research explores the possibility of combining the advantages of DRB with Arbitration, particularly in the context of construction sector disputes. Despite the limited popularity of DRB in India, its distinct advantages can be integrated with the widely used Arbitration method to enhance effectiveness in preventing disputes.

The research endeavors to formulate an innovative mechanism that is well-suited for both prevention and its amicable resolution.

LITERATURE REVIEW

The existing literature examines various mechanisms employed in the construction industry to prevent and resolve disputes. It emphasizes that the seriousness of a dispute is influenced by the chosen methods of delivery, procurement, and the type of contract selected by the owner. When disputes remain unresolved, parties often resort to claims, and traditional methods such as litigation involving courts are commonly used. However, many construction industry professionals express reservations about litigation due to its intricate processes and the desire for privacy.

Many resources have identified the common causes of construction disputes which are already narrated in the present work. To avoid dispute it is recommended to communicate through the entire process, set all the terms using clear language, if it is unclear make sure to address it before moving forward. (El-Sayegh, et. al., (2020); Illankoon, I. M. C. S., et al. (2022).)

In the pre-conflict stages, options such as mediation, negotiation, and adjudication, collectively known as Alternate Dispute Resolution Methods (ADRs), are available. (Goldberg, S. B., et. al., (2020)) However, arbitration remains the optimal choice for resolving disputes. (Mishra, K., & Aithal, P. S., (2022))

The Indian construction sector requires a dispute resolution system that encompasses both preventive and adjudicatory aspects and employs techniques such as avoidance, negotiation, collaboration, and adjudication to address disputes. With the assistance of reputable businesses and corporations, the International Institute for Conflict Prevention & Resolution ("CPR") has suggested a Model of Dispute Prevention and Resolution Provisions. The primary goals of the model rule are the provision of a turnkey solution for resolving conflicts, the creation of a framework for identifying potential conflicts early in the contracting relationship, and the establishment of binding arbitration as the last resort. The Model Dispute Prevention and Resolution rules are replicated in three ways by CPR: "Standing Neutral," "Standby Neutral," and "No Neutral." The appointment of an impartial third-party professional ("neutral" or "relationship facilitator") to assist the parties in identifying and resolving conflicts before they escalate to the point where they may result in litigation or binding arbitration is supported by regulations titled "Standing Neutral" and "Standby Neutral." The provisions allow the parties to choose whether the Relationship Facilitator will become involved when a dispute arises and the parties want the Relationship Facilitator's assistance in resolving that legal dispute, or whether the Relationship Facilitator will take an active role in assisting the parties in dealing with their relationship and resolving any capability conflicts (i.e., the "Standing Neutral" provisions). The accompanying "No Neutral" provision, in contrast, employs comparable methods and techniques to pinpoint and settle disputes; however, in the absence of an unbiased Relationship Facilitator, Parties are free to select the model that best meets their needs by taking into account variables like the anticipated duration of the relationship, the contract's value, the size, and organizational capacity. (International Institute for Conflict Prevention & Resolution (CPR), 2021).

RESEARCH METHODOLOGY

In this research paper, researchers have endeavored to create an innovative approach to prevent disputes. In India, the prevailing practice for dispute prevention has been limited to a few projects implementing Dispute Review Boards.

However, due to various reasons contributing to the limited popularity of Dispute Review Boards in India, the researchers have undertaken the task of devising new models for dispute prevention specifically tailored for the Indian construction sector. To the researchers' knowledge, there is no existing practice of a distinct mechanism for dispute prevention designed for the Indian construction sector, making this research both novel and qualitative.

The proposed mechanisms introduced in this research can be adapted to suit industry-specific requirements and circumstances. Parties involved in construction projects can take into account key factors such as project duration, budget constraints, anticipated risks, and contractual terms and conditions when selecting the most appropriate mechanism. This approach will facilitate open communication, mutual understanding, efficient collaboration, and honest cooperation among the parties, ultimately guiding them in the prevention of disputes.

RESEARCH CONTRIBUTION

The importance of this research lies in its introduction of a dispute prevention mechanism specifically tailored for disputes within the Indian construction context. While globally the Dispute Review Board (DRB), also referred to as Dispute Adjudication Board (DAB) or Dispute Board (DB), has been widely employed as a primary mechanism for dispute prevention and resolution in the construction industry, its utilization has been largely unfamiliar within the Indian construction sector. Indian Council of Arbitration (ICA) summarized the reasons for failure of DRB in India as follows;

- I. Delays in the establishment of Dispute Boards (DBs), resulting in a substantial loss of time before the DB mechanism becomes operational;
- II. Insufficient qualifications and expertise of DB members, as required by project and contract specifications, and sometimes a lack of awareness regarding the principles and procedures governing DB operations;
- III. Prolonged duration taken by DBs to resolve referred disputes, exceeding the contractual stipulated timeframe; and
- IV. Parties' inclination to contest DB decisions in Arbitration and Litigation, given that DB decisions are not conclusively binding unless both parties have mutually accepted them. This reluctance to accept the system results in a non-implementation of decisions rendered by DBs. (Indian Council of Arbitration, 2016, p. 2)

Hence, researchers propose a new model as an effective alternative to DRB, which is as follows;

Neutral Relationship Facilitator

The proposed mechanism suggests engaging a neutral third party to assist the involved parties (i.e., client and contractor) in identifying and resolving business claims before they escalate into full-fledged disputes. This neutral figure, termed as a Relationship Facilitator, can actively be involved throughout the project. Their role includes fostering improved communication between the parties, aiding in relationship management, and facilitating the resolution of any potential claims. The facilitator may carry out weekly, monthly and quarterly meetings for tracking the progress of contract enforcement and timely intervention in case of claim by the either of the party to the contract.

Good Office

A joint office will have representatives of all parties to the contract to monitor the contractual enforcement to prevent any claim. They may have frequent meetings to avoid any disagreements and ensuring smoother enforcement of contract.

Combined Mechanism

Combining the first two procedures, this one involves the disputing parties' representatives collaborating with the Relationship Facilitator to prevent disputes. Parties have the option to take their disagreement to an arbitral tribunal if the Relationship Facilitator and Joint Office are unable to resolve the problem.

Arbitration

As mentioned above, a primary cause of the DRB mechanism's ineffectiveness in India was its non-binding dispute resolution outcome. Researchers have suggested arbitration as the ideal form of dispute resolution in order to resolve this problem and in the case that dispute prevention fails.

Suggestions

Based on the doctrinal research, authors propose following model.

- a. Relationship Facilitator

- b. Good Office
- c. Combined Mechanism (Relationship Facilitator + Good Office)

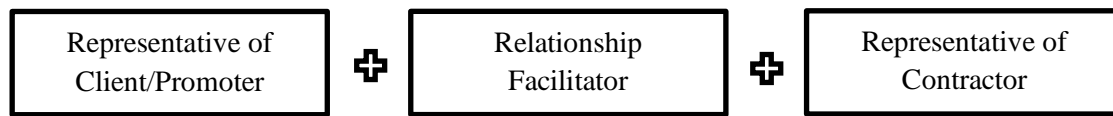


Figure 6.1 Combined Mechanism Model

Based on our research findings, we propose that stakeholders in the construction industry consider adopting and implementing these models for preventing disputes. Our study and the feedback received suggest the following recommendations:

- a. There is a necessity for appointing a neutral third party, as this neutral individual can effectively oversee the project's progress. The cost of employing a relationship facilitator is relatively lower compared to other methods.
- b. In instances where parties are reluctant to involve a third party in project monitoring and dispute prevention, they have the option to choose the joint office or good office mechanism. This alternative can help save the additional cost associated with appointing a neutral third party.
- c. The combination of both a relationship facilitator and joint office proves to be an effective approach for dispute prevention while maintaining a positive relationship between the involved parties.

CONCLUSION AND SUGGESTIONS

Divergent opinions exist in the building industry for a number of reasons. The differences could be minor or significant in scope. Minor disputes can be easily resolved when those involved cooperate, understand one another, and have good intentions. In order to resolve these conflicts, alternative dispute resolution procedures including negotiation, conciliation, and mediation may also be employed. The problem occurs in large-scale disputes when neither party is prepared to use any of the previously listed ADR approaches to resolve the conflict. In certain situations, arbitration or a Dispute Review Board are the only ways to settle a dispute. These mechanisms can be expensive and time-consuming, as the study shows, which can lead to project time and cost overruns. The use of these dispute resolution processes has several additional drawbacks. Therefore, a system that would shield all involved parties from serious time and financial losses as well as the project itself had to be developed. The only way to do this is to stop arguments or conflicts from turning into major confrontations. In the construction industry, a number of conflict resolution processes have been developed globally, but little to no work has gone into creating a system that focuses on preventing problems in India. With the help of this research study, we tried to create a method that will help with conflict prevention.

Three techniques for preventing disputes have been offered in this research: the relationship facilitator, the good/joint office mechanism, and the combined mechanism, which combines the relationship facilitator and good office. This model will ensure effective prevention and redressal of construction disputes, thereby enabling the timely completion of project.

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