

Literature survey on causes of dispute arising in construction sector

^{#1}J. S. Dangat, ^{#2}Prof. A. R. Vasatkar

¹jitendra_dangat@yahoo.com

¹P. G. Student, Department of Civil Engineering,

²Assistant Professor, Department of Civil Engineering,

TSSM's BSCOER Narhe,

SPPU, Pune, India.



ABSTRACT

In today's scenario millions of rupees are invested in infrastructure sector to fulfill the current requirement of growing population. Infrastructure projects are most multifaceted, each projects are unique required various specialist in every discipline to work together to complete. The infrastructure projects takes lot of time for completion and many parties are involved in the project. These infrastructure projects have unique design and work methodology, skilled labors, efficient management and huge investment. Therefore differences in individuals are often occurring in construction projects due to its unique in nature. This differences if not handle properly then it leads to disputes. Such disputes are harmful for any project as it cost construction project in timely as well as monetary manner. Claims are the initial stage of disputes which requires necessary attention and technique to suspend it. Claims are often seen in every construction work. Current research work investigates the reasons of dispute through the literature survey. It is expected that the study of this research work will help the construction related parties to avoid the claims and accordingly avoid the dispute.

Keywords: Claims, Contracts, Disputes, Vendors.

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I. INTRODUCTION

Construction industry has numerous complex projects, which cannot be define at the time of planning. Due to these uncertainties more chances of occurrence of dispute in construction projects. Construction projects involves the various vendors like Proprietor, Contractor, Consultants and Architects which may give chances of claims due to differences in interpretation of work.

The aim of this study is to identify the causes of dispute which occur in the construction work, so that to industry stakeholders may change the management strategies to mitigate or avoid the possibility of raising the dispute in their work.

This study is carrying out to identify the causes of dispute which is arising at the different level and time of the any construction work. Also try to figure out magnitude of causes in construction work.

This study cannot make any difference, however; intention is that vendors will prepare well in advance for the occurrence of claims and try to dissolve the claim before it converted into dispute.

There have been several studies on many related this topics. Therefore the starting point was to explore the international literature on disputes and conflicts and then identify key trends and movements which have resulted from the problem of the adversarial nature of the construction industry.

The study is organized as such:

- Terms and parameters
- Effects of disputes
- Sources of disputes
- Current thinking on dispute resolution systems

II. TERMINOLOGY

A. CONFLICT

Collins, (1995) "It is serious disagreement and agreement about something important".

While Willmot and Hocker (1998), provide a detailed definition of conflict as "An expressed struggle between at least two independent parties who perceive incompatible goals, scare resources, and interference from other achieving those goals".

B. CLAIM

Claim is basically, a contract adjustment due to changes or additions to the original Contract .

Powell - Smith and Stephenson, (1993) “For the assertion of a right to money, property or remedy”.

While Likewise, Semple et al. (1994) define a claim as “A request for compensation for damages incurred by any party to a contract”.

Douglas Yarn (1999) has observed that conflict is a state rather than a process. People who have opposing interests, values, or needs are in the state of conflict, which may be manifest, in which case it is brought forward in the form of a dispute which cannot exist without a conflict.

Costantino and Merchant (1996), Conflict is the process of expressing dissatisfaction, disagreement, or unmet expressions. Conflict is ongoing, intangible and amorphous.

Loosemore and Djebarni (1994), has commented that whilst there is little consensus among sociological scholars on a specific definition of conflict as a common denominator is that for conflict to occur there must be an incompatibility of needs and a perception by one party that this incompatibility interferes with the attainment of that person’s needs.

Brown and Marroit (1993), has subscribed a similar definition. “A conflict exists, in the mind of an individual, when he/she perceives a situation of incompatibility among objectives, whereas a dispute is a conflict of which both parties are conscious and which is the subject to alteration between them.

C. DISPUTE

Diekmann and Girard, (1995) defines dispute, “Any contract question or controversy that must be settled beyond the jobsite management”.

John Burton (1990) has suggested that Disputes are short-term disagreements that are relatively easy to resolve. Burton has referred the conflicts as Long-term, deep-rooted problems that involve seemingly non-negotiable issues and are resistant to resolution of the problem.

Brown and Marriot (1993), has defined the dispute as a class or kind of conflict, which manifest itself in distinct, justifiable issues which involves disagreement over issues which are capable of resolution by negotiations, mediation, or third party adjudication.

Brown and Marriot (1993), “An actual ‘dispute’ will not exist until a claim is asserted by one party which is ‘disputed’ by the other”.

III. CAUSES OF DISPUTE

Many authors identified various causes of dispute through their research work, is as follows,

Hewit (1991),

- Change of scope
- Change work conditions
- Delay
- Disruption
- Acceleration

- Termination

Spittler and Jentzen (1992),

- Ambiguous contract documents
- Competitive/adversarial attitude and
- Dissimilar perceptions of fairness by the participants

Watts and Scrivener (1993),

- Determination of the agreement
- Payment related
- The site and execution of work
- Time related
- Final certificate and final payment

Heath et al. (1994),

- Contract terms
- Payments
- Variations
- Extensions of time
- Re-nomination and
- Availability of information

Conlin et al (1996),

- Payment
- Performance
- Delay
- Negligence
- Quality and administration as headings of construction Disputes

Kumaraswamy (1997),

- Variation due to site conditions
- Variations due to client changes
- Variations due to design errors
- Unforeseen ground conditions
- Ambiguities in contract documents
- Interferences with utility lines
- Variations due to external events
- Exceptional inclement weather
- Delayed design information and
- Delayed site possession

Yates (1998),

- Variations
- Ambiguities in contract documents
- Inclement weather
- Late issue of design information/drawings
- Delayed possession of site
- Delay by other contractors employed by the client (e.g. Utility companies)
- Postponement of part of the project

Mitropoulos and Howell (2001),

- Project uncertainty
- Contractual problems
- Opportunistic behaviour,
- Contractors’ financial position and
- Cost of conflict and culture

Brooker (2002),

- Payment,
- Delay
- Defect/quality and
- Professional negligence

Sheridan (2003),

- Valuation of variations
- Valuation of final account and

- Failure to comply with payment provisions

After studying research papers, journals, study books etc. following types of claims are identified,

- Delay Claims
- Price Acceleration Claims
- Change of work order Claims
- Extra item, and Variation Claims
- Different Site condition Claims
- Damage Claims
- Loss of profit Claims
- Wrongful withholding of Deposits Claims

IV. METHODS OF CLAIMS SETTLEMENT

Following are the current methodology of settlement of disputes explains in details.

a. NEGOTIATION

Direct negotiation is a common dispute resolution process in which parties themselves, or their representatives, try to resolve the dispute without involving any neutral third party. It is a voluntary and an unstructured process agreed by both parties, privately and confidentially. The features that contribute to the success of direct negotiation include avoiding taking entrenched positions in the dispute, but rather seeking solutions, which meet the needs and interest of both parties. However, the success of negotiation depends on interpersonal communication skills of the parties during the entire process. Negotiation would be the first port of call when a dispute occurs and should resolve a dispute at this stage.

b. MEDIATION

Mediation is a private, quick, cheap process (compared to either arbitration or litigation) where a third party makes possible dialogue between the parties in order that the parties can reach their own decision that is initially non-binding. The parties can however, agree to be bound by their final decision.

c. CONCILIATION

Conciliation is a process similar to mediation except that the conciliator can express an opinion on the merits of the case and is required to recommend a solution if the parties fail to agree (Dighello 2000, Agarwal 2001). The power of the conciliators is conferred by status. In conciliation however, the third party neutral does not always meet together with the parties. The conciliator's role is also broader than in the mediation as it includes advising the parties on the possible result of the dispute if it were resolved in either arbitration or litigation.

In conciliation, the process begins with identification of the issues, then the options for resolution are explored, the conciliator advises on likely outcome of dispute in other forums and in light of this the options for resolution are considered; and ideally a consensual agreement is then reached.

d. MINI-TRIAL

Another process involving neutral third party in a dispute is the mini-trial. In mini-trial, the case is heard not by judge, but by the senior professional or other high-level business people from both sides. The representative should have full settlement authority. A third party neutral usually joins the party representative listening to the proofs and argument, and can make any necessary decision to regulate the process. Following the presentations, the parties' representatives meet, with or without the neutral, to negotiate a settlement. Frequently, the neutral will serve as a mediator during the negotiations or be asked to offer a non-binding opinion on the potential court outcome.

Adjudication

It is a statutory dispute resolution method. The Construction Act (Part II of the Housing Grants, Construction and Regeneration Act 1996) allows any party to a building contract, subcontract or appointment to refer a dispute to an adjudicator, who must then be appointed within seven days and must reach his decision within a further 28 days. The adjudicator's decision is binding unless and until the dispute is resolved by a judge or arbitrator.

e. ARBITRATION

Arbitration is a process where a third party who is independent of parties, but may be selected by them, makes an award determining the dispute. The Award is binding and can be enforced by courts.

Arbitration is the settlement of a dispute by the decision not of a regular and ordinary court of law but of one or more persons chosen by parties themselves who are called arbitrators. Thus, arbitration is out-of-court proceeding where the arbitrator acts as a judge.

Arbitration is a dispute resolution process in which one or more neutral third parties hear the evidence and arguments of each disputant and make a decision for them. The outcome is one of a win/lose situation. The decision of the arbitrator is legally binding and, often, there is no provision for appeal to a court of law. There are exceptions, such as misconduct of the arbitrator. Rules of evidence used in arbitration depend on the prior agreement between the parties. It may take a long time, same as for a litigation process, and may even be more costly.

f. LITIGATION

Litigation (used when all other venues failed) is a dispute resolution method that is inquisitorial and adversarial, where by the disputant initiates legal action against the other party by going to court (Agarwal 2001). It has a win/lose outcome and rarely satisfies both parties (Fisher et al 1991). It is costly and results into much delay for the disputants and may not do justice to the parties. However, the benefit of litigation is that the court has authority to find out the "truth" from the parties and the enforcement of the order or judgment is supported by other law enforcement agencies.

It is also used when parties have low resources and need an umpire or when they cannot agree to other forms of dispute resolution.

V. CONCLUSION

Present study provides possible causes of dispute and the dispute resolution methods used. An attempt is made to identify the causes through literature survey. If claims are identified at the time of occurrence it can be settle down effectively. So it will help to reduce the cost and time for the resolution of the dispute.

Future scope of the study is researchers can take this causes and analyze the causes through questionnaire survey and interviews with field experts.

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