

CONSTRUCTION DISPUTES AND SUGGESTING STRATEGY TO REDUCE DISPUTE

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ABSTRACT

As we all know that dispute arises out of a contract. Dispute means disagreement while contract means an agreement hence we can say, "Disagreement arises out of an agreement." Many experts, arbitrators are trying to find out that how disagreement arises out of an agreement. They are trying to solve this question. We know that dispute is undoubted and unsolved truth of construction industry but as it hampers progress of work, it is necessary to find solution to this problem so that we can solve disputes as early as possible. Due to conflicts and disputes project will no longer meet the original goal and expectation, suffer from payments of high fees and also experience a delayed completion. Also it suffers to achieve the profit maximization objective financial loss from unpaid work and claims and ultimately payment of legal fees. Avoided conflict turns into dispute, it could affect on project success. Disputes occur due to the failure of one or more project participants to fulfill their contractual obligations which impact negatively on construction projects. Dispute affect on deadlines, productivity and costs. This study aims to evaluate and rank most important dispute areas in construction industry. For evaluation data for this study is collected through questionnaire survey from four district of Maharashtra and analyzed. The scope has been limited to private contracts only. Data analyzed using Mean score method and frequency index method. According to Mean score method top 5 ranking area of disputes are Planning, Delays in payments, Differences in evaluation, Error in project documents and Excessive contract variations. According to frequency index method top 5 ranking areas of dispute are Delays in payment, Difference in evaluation, Planning, Contractual claims and Error in project documents.

Key words: Conflict, Dispute, Loopholes, Contracts, Frequency.

I INTRODUCTION

Dispute over a contract usually develops in one of two ways either the agreement may be so inaccurately made or sharply drawn as to prevent a true meeting of minds of the parties or one of them may become sick of his bargain and attempt to renege by seeking a loophole in the contract [1]. Even though an engineer takes all precautions,

everything cannot be estimated accurately or the natural calamities cannot be stopped and hence changes in actual work are unavoidable [2]. Everything cannot be documented and all contracts are not 100% accurate, there may be some type of loopholes [3]. So both parties should study and understand the contract very correctly before they sign the contract documents [4]. If there are real or genuine cases then the owners should also consider the demands at proper time. At the same time contractors should also not seek for the loopholes in the contract and claim for extras [5]. Disputes are to be avoided by both the parties for benefits of both parties [6]. Construction project outcome may measure in terms of time, cost and quality achieved. Project clients demand and want best value for their money and they want their project to be completed on time, within budgeted cost and appropriate quality or specification [7]. Procurement related factors affect on project performance. Risk is nothing but primitive stage of dispute and dispute is an output of non-meeting minds of two or more parties.

A Dispute arises when there is a difference of opinion between the parties about certainty of question. A Conflict can arise when the contractual parties have different interpretation of contract or condition under which contract work was undertaken. As no two minds can think in the same way at same time, there is possibility of differences in opinion or non-meeting of minds. This difference if not settled at right time then it will become dangerous and progress of work will be hampered. Some projects are often failed to meet clients expectation for that change in approach and practice are needed to improve project outcomes [8]. Dispute over contract usually develop in one of two ways either arrangement may be so inaccurately made or sharply drawn as to prevent true meeting of minds of the parties or one of them may become sick of his bargain and attempt to renege by seeking a loop hole in the contract. Even though an engineer takes all precautions, everything can be estimated accurately or natural calamities cannot be stopped and hence changes in actual work are unavoidable. Conflicts and disputes management in construction is generally associated with disputes resolution techniques. Innovative techniques are capable of reducing frequency of disputes [9]. Everything cannot be documented and all contracts are not 100% accurate, there may be any type of loop hole. So both parties should understand the contract very correctly before they sign the contract documents. And if there are real or genuine cases then owner should also consider the demands at proper time. At the same time contractor should also not seek for the loop holes in the contract and claim for extras. Disputes are to be avoided by both the parties for benefits of both parties. At present: there is a research conducted to look in to viability of dispute avoidance procedure for Malaysian construction industry [10]. Data for study is gathered through structured questionnaire. The other method of data attainment is through consultation with experts and people who work in involved organization by email contact telephone interviews as well as face to face interviews.

1.1 Problem statement

A dispute arises when there is a difference of opinion between the parties about certainty of question. A conflict arises when the contractual parties have different interpretations of the contract or the conditions under which the contract work was undertaken. As no two minds can think in the same way at the same time there is possibility of

difference in opinion or non-meeting of thoughts, this difference if not settled at right time then it will become dangerous and progress of work will be hampered.

II METHODOLOGY

Data collected through questionnaire survey from four district of Maharashtra and analyzed. Work will be analyzed based on the data provided by Stake holders. Formulae used,

Mean score ranking = sum of weight by respondent/sum of no. of respondent

1=strongly agree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree For cause Misinterpretation of client requirement by designer from design area sample calculation is as follows

Mean score ranking= sum of weight by respondent/sum of no. of respondent

$$\begin{aligned} &= 1(15) + 2(17) + 3(7) + 4(6) + 5(5) / 15 + 17 + 7 + 6 + 5 \\ &= 15 + 34 + 21 + 24 + 25 / 50 \\ &= 119 / 50 \\ &= 2.3800 \end{aligned}$$

Frequency Index = $3n_1 + 2n_2 + n_3 / 3(n_1 + n_2 + n_3)$

n_1 =no. of respondent who answered high, n_2 =no. of respondent who answered medium, n_3 =no. of respondent who answered low

Sample calculation

For cause Misinterpretation of client requirement by designer from design area sample calculation is as follows

Frequency Index = $3n_1 + 2n_2 + n_3 / 3(n_1 + n_2 + n_3)$

$$\begin{aligned} &= 3(3) + 2(8) + 39 / 3(3 + 8 + 3) \\ &= (9 + 16 + 39) / 3(50) \\ &= 64 / 150 \\ &= 0.4267 \end{aligned}$$

III RESULT AND DISCUSSION

3.1 General

53 Stake holders were asked to rate areas of conflicts in building projects established from Interviews and literature review. The results are obtained from the analysis of questionnaire survey. Results contain causes of dispute and areas of dispute in following manner

- 1 Mean score rank for each area
- 2 Frequency index for each area
- 3 Suggestion for each highest rank cause

3.2 Result

3.2.1 Mean score rank for each area

According to mean score rank the first ranked area is planning. Delay in payments ranked second area of conflict. The third ranked area of conflict is differences in evaluation. Errors in project documents ranked as fourth area of conflict. The fifth ranked area of conflict is excessive contract variations. A contractual claim is ranked as sixth area of conflict. Material and multiple meaning of specification are ranked seventh and eighth respectively. Poor communication among project members was ranked as ninth area of conflict. Misinterpretation and misunderstanding of information sent / received could give rise to conflicts in this area. Design errors were ranked tenth area of conflict.

Table 1 Mean score rank for each area

SR No.	Area	Mean score
1	Design	2.9701
2	Contractual claim	3.2501
3	Multiple meaning of specification	3.1529
4	Delays in payments	3.4764
5	Poor communication	3.0931
6	Excessive contract variations	3.2696
7	Differences in evaluation	3.3470
8	Error in project documents	3.3412
9	Material	3.25
10	Planning	3.5147

3.2.2 Frequency Index for Each Area

According frequency index rank first ranked area is Delay in payments. Differences in evaluation ranked second area of conflict. The third ranked area of conflict is planning. Contractual claims ranked as fourth area of conflict. The fifth ranked area of conflict is Errors in project documents. Material ranked as sixth area of conflict. Material and multiple meaning of specification and poor communication are ranked seventh and eighth respectively. An excessive contract variation was ranked as ninth area of conflict. Design errors were ranked tenth area of conflict.

Table 2 Mean score rank for each area

SR No.	Area	Frequency
1	Design	0.5303
2	Contractual claim	0.6054
3	Multiple meaning of specification	0.5569
4	Delays in payments	0.6549
5	Poor communication	0.5409
6	Excessive contract variations	0.5409
7	Differences in evaluation	0.6225
8	Error in project documents	0.5863
9	Material	0.5768
10	Planning	0.6128

3.2.3 Suggestions for each highest rank cause

1) Cause-Cheap design instead of quality

- a) Appoint reputed design consultant
- b) Ensure about plans

2) Cause-Inadequate contract documents

- a) Clear and reflect intention
- b) Balance contract and fair to all parties
- c) Self explanatory and in ambiguous
- d) Clearly define list of documents

3) Cause-Cut and paste tendency

- a) Provide specifications clearly written, reflecting skills, material and plant required
- b) Provide standard specifications

4) Cause-Poor financial arrangements by the clients leading to late payments

- a) Ensure adequate funds availability
- b) Provision of interest over delayed payment

5) Cause-Late conformation of variations

- a) Starting of work after rigid budget
- b) Penalty towards owner side in case of late conformation of variations

6) Cause-Changes or modifications of scope that increase consequential costs beyond initial limit

- a) Time extension and compensation for additional work
- b) Revise estimation, remove unnecessary part and add revise part

7) Cause-Profit making or loss balancing approach of contractor's by using inferior in lieu of the ones specified in the contract

- a) Allot contract to reputed contractor
- b) Gives specification of material with alternatives
- c) Termination of contract if required quality not achieved

8) Poor records keeping by client, contractor and consultant

- a) Keep accurate and complete record
- b) Take photograph of work
- c) Documented all discussions, project meeting, all instructions and action to be taken over them
- d) Interchange draft copy of records

9) Cause-Non availability of specified material

- a) Prepare specifications after market survey
- b) Gives list of alternative material
- c) Contractor and client equally bear the differences or provision of provisional sum for extra/alternative purchase

10) Cause-Acceleration of works requested by client that affected schedule

- a) Define extension time in working hours/days
- b) Provision of penalty beyond maximum extension time

11) Cause-Delay in the supply of working drawing

- a) Supply of all set of working drawing at day one

12) Cause-Inexperience of specification writer

- a) Carefully review all project, plans and specification
- b) Establish control review team
- c) Copy of specification cross checked by both parties

13) Cause-Excessive claims made by the contractor beyond client's financial Protection

- a) Realistic assessment
- b) Accept enforceable claims only
- c) Establish dispute resolution board

14) Cause-Ineffective communication between the parties on the project

- a) Minutes of meeting
- b) Clear line of communication
- c) Take follows up

15) Cause-Rigid budget control by client

- a) Item wise payment schedule
- b) Increase project review frequency

IV CONCLUSION

Dispute is reality of construction project Dispute arises between contractor, sub contractor and owner regarding performance of project. Minimization of disputes therefore can eliminate unnecessary costs, delays, strained relationships and finally save time causes of dispute categories in to ten areas. These areas found out from literature survey. Literature review based on paper published in different international conferences Review includes current thinking, finding and approaches to problem. Among these areas according to mean score ranking top 5 areas of disputes are Planning, Delays in payments, Differences in evaluation, Error in project documents and Excessive contract variations. Frequency wise occurrence of dispute areas are Delays in payments, Differences in evaluation, Planning, Contractual claims and Error in project documents.

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