

# Conflicts & Disputes in Construction Projects

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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? 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. 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. Level three is the intra-group conflict, However, the fundamental conclusion from this research is that "people" hold the key to avoiding contract disputes.**

**Keywords: Arbitration, Conflict, Construction, Contract, Dispute**

## I. 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.

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. Wide-ranging dispute resolution mechanism necessities to address all these concerns. At present, the Arbitration and Conciliation Act, 1996 (India) is the foundation for all dispute resolutions. In sectors like National Highways, provisions are made in the contract document for a Dispute Review Expert (DRE) and Dispute Review Boards (DRBs).

## II. WHY DISPUTE ARISES 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.

### III. LITERATURE REVIEW

**Conflict:** It would look as if that the word ‘conflict’ is infrequently used in the construction industry (at least in communications between parties). This most probably is, as earlier discussed, due to the controversial nature of the word. The word ‘conflict’ and the idea of conflict is still central to many of the academic publications and critiques on disputes and the resolution of disputes [Cheung et al, 2006; Econtech, 2006; Fen et al, 1997; Gardener and Simmons, 1995; Gebken, 2006; Kassab et al, 2006; Kumaraswamy et al, 2004; Semple et al, 1994].

It was therefore felt significant to include some discussion on the nature of conflict from an academic point of view given that conflict, as a perception, provides an groundwork to much of the writings in the field. Most authors on the topic are at pains to stress that conflict is inevitable in any society and more mostly that conflict can be viewed as either positive or negative [Gebken, 2006; Al-Tabtabai and Thomas, 2004].

Leung et al. [2005] take the view that conflict in the construction industry should not simply be defined as a functional or dysfunctional element in the administration process and more than a few authors advocate that moderate stages of conflict can improve fulfillment in a working environment until a point where conflict deteriorates and happiness diminishes [Hughes, 1994, Gardener and Simmons, 1995, Loosemore, 1994].

Al-Tabtabai and Thomas [2004] in support of the view that conflict is a active and evolving process and is perceptual in nature. Rosenhead [2006] argues that, on the basis of difficulty theory, a conflict free environment is inaccessible and even undesirable. Rather than trying to combine a state of stable equilibrium (i.e. conflict free) the organization should aim to position itself in a region of bounded instability i.e. in tension. Few papers in the construction press deal with a theoretical exploration of the nature of conflict. The exceptions being Yiu and Cheung [2006] who examines the use of catastrophe theory in weighing the balance between tension and behavioral flexibility as a means of determining the ‘tipping point’ when tension ceases to be creative and becomes counter-productive. Price and Chahal [2006] who cite the three basic assumptions of conflict theory as being: competition, rather than agreement, is a key human trait structural inequalities in power and reward continue living in all social structures revolutionary change is often the result of conflict from competing interests rather than from side to side adaptation.

In summary, Fenn et al. [1997] make the inspection that there are two academic Stand points viz. those who treat conflict and dispute as pathological states and seek to understand cause and treatment; and those who take conflict for granted and study the behavior associated with it. It is recommended that the more productive approach for this project is to take conflict for granted and study the behavior associated with it. Whilst it might be argued that the word ‘conflict’ is one which the construction industry would like to avoid at all costs, there does seem to be the need for a term which describes the competitive environment of social intercourse which takes place between organizations and between individuals in each organization.

There is also a require to recognize situations in which organizations and individuals have conflicting goals “when one party or individual perceives that one or more others have irritated or about to frustrate a major concern of theirs” [Thomas, 1992]. If the construction industry finds that the word ‘conflict’ is too emotive in nature, and then possibly the use of the word ‘disagreement’ as used the NSW Contract Dispute Resolution Guideline and in GC21 would be more appropriate if ‘disagreement’ is taken to mean a robust discussion as opposed to a situation which has purely unenthusiastic connotations. There is no doubt however that ‘conflict’, from an educational standpoint, is firmly embedded in construction literature and is generally viewed as the starting point for the investigation of disputes and dispute resolution.

**Dispute:** Reid and Ellis [2007] in a paper entitled ‘Common sense applied to the definition of a dispute’ make the argument that there is no ultimate meaning of “dispute” and the subsistence of a dispute in construction adjudication is a subjective issue requiring a practical common-sense approach relying on the

facts, the law and policy considerations. The Halki Principle (which is applicable in the UK, but also relevant to Australia and can be summarized along the lines that a dispute does not exist up until a claim has been submitted and prohibited; a claim actuality a demand for compensation for damages incurred by any party to the contract). Reid and Ellis make the point that, although the Halki Principle may appear to be clear cut, a strict application of Halki may root a breach of natural justice in approximately cases “whereas a commonsensical application of the Halki assessment, taking perception of time-related issues and the innovative intent of construction adjudication, offers scope to establish a universal policy”. This is an interesting observation given that the authors are attempting to define ‘dispute’ from a legal standpoint.

Gebken [2006] in his doctoral thesis ‘Quantification of Transactional Dispute Resolution Costs for the U.S. Construction Industry’ explores definitions of dispute in a construction industry context at a few length. Gebken, for the purposes of his own thesis, adopted the following meaning suggested by Diekmann and Girard’s viz. “somewhat agreement question or argument that necessity be established elsewhere the jobsite organization staff [Diekmann and Girard, 1995]. Gebken also notes that ‘this definition is also similar to that adopted by the Construction Industry Institute (CII). The CII defines a dispute as, “a problem or dissimilarity between the parties that cannot be resolved by on-site project managers” (Construction Industry Institute, 1995). The emphasis on ‘jobsite’ or ‘on-site’ carries the inherent assumption that disputes firstly are seen as happening on site then rising upwards through the organisational hierarchy. Gebken, Diekmann& Girard and the CII are not alone in adopting the idea that disputes are, in the main, triggered by contractual issues.

For example The New South Wales Contract Dispute Resolution Guideline states that “The most common protracted dispute arises when a Contractor makes a claim for an increase in the contract entirety which is disallowed by the Project Manager, and the Contractor officially informs that it does not agree to take the conclusion by the Project Manager” [New South Project 2007-006-EP Page 7 of 62 Wales Department of Commerce, 2007]. This statement is also in accord with the Halki test that a dispute occurs after a claim has been submitted and discarded.

The GC21 contract in attempting to initiate a less adversarial tone, has opted to use the term ‘meanings’ rather than ‘definitions’ to describe key words and phrases in the contract. The GC21 denotation of an subject is “Any matter, argument or alteration raised by also party below in Clause-73” & Clause-73.1 states that “The Contractor may dispute an assessment, determination or instruction of the Principal, or an unsettled Claim, by giving notice to the Principal (copied to the Principal’s senior executive named in Contract Evidence item 7A) of an Matter within 28 days afterward the appraisal, purpose or instruction, or within 14 days as provided in clause 72.7 for an Unresolved Claim”. The statement that a Contractor may dispute an issue seems to confuse rather than clarify the position, however the intention is clear in that issues under GC21 happen either from disputed assessments, determinations or commands or unresolved claims.

In summary, accepting Reid and Ellis’s argument that there is no universal perfect definition of ‘dispute’ there is obviously a essential to agree a recognized working definition or meaning for the resolutions of this project. Gebken, is serious of the definition suggested by Brown and Marriott [1993] cited in Yates [2003] that a dispute involves disagreement over issues capable of resolution by negotiation, mediation or third party adjudication because, he argues this introduces characteristics of both disputes and claims in the one definition. On the other hand, whilst Gebken’s adoption of Deikmann and Girard’s definition is reasonable in the background of his doctoral research, it would appear to be too slight in the background of this project.

In a legal context a dispute is recognized once a notice of dispute has served underneath the contract situations, however situations of contract tend to be more afraid with what has given rise to a dispute than a definition of a dispute per se. Despite Gebken’s criticism, and in the nonattendance of any telling argument against, it would appear that a definition along the lines proposed by Brown and Marriott would be the most appropriate for the purposes of construction project viz. that a dispute is a disagreement that requires resolution. The omission of mechanisms for resolution from the definition provides a generic definition that is probable to fit most conditions and is in the essence and GC21 and similar types of situations of contract.

#### IV. TYPES OF CONFLICTS

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. Level three is the **intra-group conflict**, the conflict between groups in the same organisation, team or command. The interactive and intra-group clashes can supplementary be characterized into three types: the association, task and procedure conflicts (Jehn, 1997; Simmons and Peterson, 2000; Jackson et.al-2008).

Relationship or emotional conflict is a discernment of interpersonal incompatibility and typically includes tension, annoyance, and animosity among group members (Simmons and Peterson, 2000). A number of studies done by researchers such as Gladstein (1984), Wall and Nolman (1986), Jehn (1995), Jahnssen et al., (1999) cited in Simmons and Peterson, document the negative effects of relationship conflict on group and organisation satisfaction and commitment. Relationship conflict pessimistically affects group decision quality in three ways. First, it limits information processing ability of the group because the group members spend most of their time and energy focusing on each other rather than on the group problems. Second, it limits group members' cognitive functioning by raising their stress and anxiety levels and third, it encourages antagonistic or sinister attributions for other group members' behavior, which can create a self-fulfilling prediction of mutual hostility and conflict escalation. Task or cognitive conflict is a perception of disagreements among group members about the content of their decisions and involves differences in viewpoints, ideas, and opinions. According to Jehn (1997), task conflict can improve decision – making outcomes and group productivity by increasing decision quality through incorporating devil's advocacy roles and positive criticism. Groups use members' capabilities and prior knowledge better when the conflict is task-focused, rather than when conflict is not present or relationship-focused. Jehn [1997] further contend that reasonable levels of task conflict are constructive, since they inspire discussion of ideas that help groups perform better. Groups with an absence of task conflict may miss new ways to enhance their performance, while very high levels of task conflict may interfere with task completion.

According to Simons and Peterson (2000) a number of researchers have found that task conflict can lead to increased satisfaction with the group decision and a desire of members to stay in the group, and also have shown a cross relationship between the two forms of conflict. Researchers have established that efforts to encourage potentially beneficial task conflicts run a substantial risk of triggering disadvantageous relationship conflict. Simmon and Peterson suggest two possible explanations; first they contend that, task conflict leads to relationship conflict through a process of misattribution. Group members constantly interpret the behaviour of other group members – they infer intentions, appraise whether the source of the behavior they see is internal or external, and assess the completeness and accuracy of the arguments. made by others. When this attribution process points toward personal affection or hidden agendas, then task conflict triggers relationship conflict. The second justification is the behavior of group members. In the process of task conflict, some group members may use expressively harsh language, intimidation tactics, or ad homonym arguments. From such behavior and conduct other members can feel bruised, humiliated, offended, disrespected or even brutalized thus causing relationship conflicts. While on the other hand it is possible that relationship conflict could trigger task conflict. This may happen when one group member attempts to make life difficult to another group member by sabotaging any manipulate that the other might have and by so doing a task conflict is manufactured.

Jackson et al (2008) define process conflict as an awareness of controversies about aspects of how task achievement will proceed. It pertains to issues of duty and resource allocation such as; who should do what or how much one should get. This may happen when for instance group members oppose about whose responsibility is to carry out and complete a specific duty. Jackson et al in their study of process conflict identified three sub-categories of process conflict which are; scheduling and timing referring to issues of attendance punctuality and time spent on a particular work. involvement and workload; referring to issues of fairness in workload distribution, commitment and follow up of assigned works, conflict over credit recognition and conflict about members not showing up at all. Work method and approach; referring to issues such as conflicts over ideas or work method. Process conflict may activate latent conflicts or may detract from the benefits of healthy task conflict.

## V. FUNCTIONAL AND DYSFUNCTIONAL CONFLICT PHENOMENON

The phenomenon of conflict is considered along two different perspectives. According to Vaaland and Håkansson (2003), the first perspective regards conflict as a disease in organizations with primarily disruptive, dissociating, and dysfunctional consequences. In this perspective, the study of conflict has aimed to resolve it and to minimize its deleterious effects because of fear that too little coherence can develop into destructive conflict and a diffusion of focus. In projects this is achieved through detailed contracts and a high degree of specification. Furthermore, price mechanisms and institutionalized patterns of behaviour are used as instruments to reduce emergence and growth of conflict.

According to Loosemore (2000) conflicts can enhance creativity and innovation. History tells that conflicts like the two world wars stimulated inventions which led to development of radar, jet-propelled aircraft, the United Nations, the World Bank, the international Monetary Fund just to mention a few. The cold war conflict led to development of nuclear power and space race which provided communication satellites and cell phones widely used today (Loosemore, 2000:2-3). Vaaland and Håkansson (2003) argue that, “several scholars within industrial network approach and conflict theory argue that development and creativity are stimulated by imbalance and problems. This is backed by the old Japanese proverb that the moment two bubbles are united, they both varnish”. Indeed as proclaimed by Vaaland (2004), without conflicts, progress and creativity disappear. Gadde and Håkansson in Vaaland and Håkansson (2002), illustrate how conflict may be functional and dysfunctional by a figure with two axes, the first axis indicate the degree of collaboration between two parties, and the second indicate the degree of conflict in connection with business relationships as shown in figure 4.2. The figure reflects that, by viewing collaboration and conflict as two dimensions, it is possible to identify four combinations.

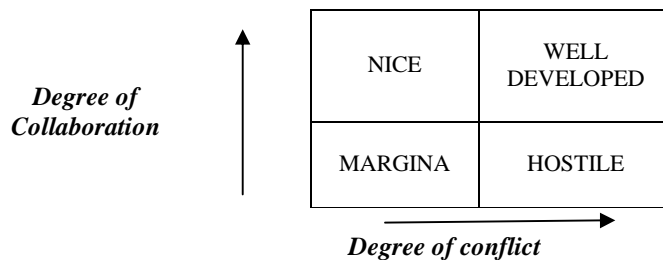


Figure : 1 : Functional and dysfunctional conflict model Sources:Vaaland & Håkansson (2003)

This situation is explained by Vaaland and Håkansson (2003) basing on the studies of industrial business relationship as an indication of a typical well developed buyer – seller relationship, expressing an efficient process that is accompanied with technological complexity, strong activity interdependencies, large number of internal and external third parties directly and indirectly involved, and time pressure. This exemplify a typical situation for a complex construction project that demands specialized knowledge and skills in the design and construction process and involve various participants who come together on temporary basis to compose a building.

The main argument that conflicts can be functional is based on the view that the origin for improvement can be found in conflict as long as it is accompanied by cooperation. According to Vaaland (2004), conflict is characterized as functional when it adds necessary tension and motivation to the relationship that extend opportunities and speed up innovation. The question is how in a project a hostile relationship can be transformed into a well developed relationship in other words, as Vaaland advocate, how can “steam” be released without removing the functional conflict? The conflict and relationship improvement model as discussed below explains how “steam” can be released.

## VI. 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.

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