

Introduction of Conflict and Dispute in Construction Industry

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Abstract: Are 'Conflict' and 'dispute' two same terms? Though these two terms used as complementary for each other they are different terms. Conflict, it is proposed, exists wherever there is incompatibility of interest, and therefore is pandemic. Conflict can be managed, possibly to the extent of preventing a dispute resulting from the conflict. Dispute is associated with distinct justiciable issues. Disputes require resolution. This means that they can be managed: the process of dispute resolution lends itself to third party intervention. The conceptual difference between the two is explained and further studied through the literature paper on conflict and dispute in the field of construction; a clear view for future professional is also introduced so that they take proactive measures according to present and future problems.

Keywords: Conflict, Construction, Dispute, Disagreement, contract

1. Introduction

Is there a difference between conflict and dispute? If so, should we concern ourselves with the difference? Some authors do not differentiate: Moore manages to mix the two terms in the first paragraph of his first chapter. Brown and Marriot point to conceptual differences, even if they are blurred. Schelling describes a field of research variously characterized as 'theory of bargaining', 'theory of conflict' or 'theory of strategy'. He further argues that 'theory of games' is the most correct. The theory of games allows a further split of conflict, and therefore of disputes, with researchers falling into two camps: First those who treat conflict and dispute as pathological states and seek to understand cause and treatment; and Second those who take conflict for granted and study the behaviour associated with it.[1]

There is confusion among construction professionals about the differences between conflict and dispute, and these terms have been used interchangeably especially in the construction industry (Acharya et al., 2006). However, according to Fenn et al. (1997) conflict and dispute are two distinct notations. Conflict exists wherever there is incompatibility of interest. Conflict can be managed, possibly to the extent of preventing a dispute resulting from the conflict. On the other hand, disputes are one of the main factors which prevent the successfully completion of the construction project. Disputes are associated with distinct justiciable issues and require resolution such as mediation, negotiation arbitration, etc. [2]

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 and Dispute Review Boards. [3]

There is a general consensus that conflicts yield dysfunctional project outcomes. Empirically, it has been shown that project actors have great impact on project performance. Hence, a breakdown of relations amongst project actors leads to poor performance. The evident implication of which is low productivity, low morale, distrust, communication problems, requirement instability, rework and disputes. However, Leung and colleagues contend conflicts yield can also yield functional project outcomes (in terms of improved decision making, trust, team creativity, stakeholder satisfaction and group performance)

Furthermore, evidence suggests conflicts must be managed (i.e. keeping conflicts within allowable limits) so as to make optimize its functional outcomes [4].

2. Concept of Conflict, Claim and Disputes

Several authors have used the term conflict, claim and dispute interchangeably in construction-related literature. Acharya et al. [5] point out the differences in conflict, claim and disputes; which is presented in Figure 1.



Figure 1: Risk, Conflict, Claim and Dispute Continuum Model

Based on Figure 1, it can clearly be seen that conflict and conflict management is an essential ingredient in construction management. Thus, in order to reduce the negative impact of claims and disputes on construction projects, there is a need to identify causes of conflicts in construction projects.

3. Literature Review

Literature review of relevant literature published earlier, technical papers by various agencies are carried out. In this literature review attention is given to introduction of disputes in construction industry. The purpose of this literature review is getting an overview for finding the causes of conflicts and disputes between various stakeholder of construction project by using various data collection methods such as field survey, expert questionnaire survey, institutional survey, industrial visit etc. To achieve this purpose, study results given by various authors are mentioned here in this literature review.

3.1 Conflicts in Construction

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 an 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 behavioural 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 inequality 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 behaviour associated with it. It is recommended that the more productive approach for this project is to take conflict for granted and study the behaviour 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 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.

3.2 Dispute in Construction

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 common-sense 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 lengths. 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.

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.

4. Types of Conflicts and Disputes

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 co-worker's, 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).

5. Causes of Conflicts and Disputes

According Suharto (2001), the conflict can be defined as dispute between elements or the opposite thoughts in the project. Although the conflict in the project can be blocking the achievement of one of the parties, but the advantage is as follows:

- 1) Conflict can provide information and new ideas that ultimately improve the quality of decision-making.
- 2) Conflict can force the parties involved to think and reconsider his view.

- 3) Conflict can lead to problems that had been buried become the open and enable the leadership assist in finding the best solution for the project.
- 4) Conflict can teach existence mutual understanding and respect for other opinions.

Conflicts can be interpreted a disagreement between two or more members of organizations or groups within the organization that arise because they have to use scarce resources jointly, or carry out activities together, or have the status, goals, values, and perceptions is different (Ranupandoyo and Husnan1995).Leung etal. (2002, 2005) partially verified the positive impacts of conflict on construction projects by respectively using case study and questionnaire survey to testify the relationship between distinctive conflict types and participants' satisfaction.

5.1 Factor Responsible for Conflict and Dispute in Construction Projects

Constructional project contracts are the agreements made by construction project owners (contract issuing parties) and construction enterprises (contractors) according to basic construction procedures in order to complete specific construction and installation projects and to define the rights and obligations of both parties. The parties assigned to a construction contract are not competitors among themselves, but associates who have different functions to perform to achieve the common goal for accomplishing the prescribed end-product. Despite this fact, differences of opinion leading to conflicts do arise, since in the final analysis, each party has to protect his interests and financial gain. Most of the happenings that could occur during the currency of a contract cannot be foreseen. However, their gravity can be diluted by following ethical practices and by performing business in an unemotional and above-board manner. Some most important causes of conflict and dispute are listed below:

- 1) Changes in Contract work
- 2) Differing in unusual site conditions actually encountered
- 3) Suspension of Work
- 4) Variation in quantities
- 5) Damage due to natural disasters and force-majeure
- 6) Re-inspection and acceptance
- 7) Termination for the convenience of the client
- 8) Possession prior to completion
- 9) Escalation of price due to inflation
- 10) Acceleration of work progress
- 11) Ripple effect
- 12) Currency fluctuation effect
- 13) Ambiguity in specifications and drawings

If these conflicts are not clearly managed, Claims are made by contractor and further if claims did not get clearly resolved disputes arises.

6. Conclusions

The analytical approach 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 endeavours, 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, behaviours, relationships, and decision processes. The main focus is cooperation rather than competition is emphasised in whole study.

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