

## RELATIONSHIPS BETWEEN CONSTRUCTION PROCUREMENT AND DISPUTE RESOLUTION

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### Abstract

In 1975, British psychiatrist AA Baker first coined the term "granny buttering" as a kind of euphemism for elder abuse. Baker's concern was the necessity to prioritise care for the elderly. Since 2014, the National Crime Records Bureau, which processes crime rates in India, has familiarised a new category under the heading of crimes against the elderly. This new entry shows that elder citizens of our society are also a focus of various crimes. Keeping aside the traditional crimes in today's digital era, they are extremely to cybercrime. The elderly and users of first-generation technology are the most vulnerable to cybercrime, as per experts. In this paper, we attempt to analyse scenarios of victimization of the elderly by analysing the current situation by examining several major newspaper articles. The focus of this paper is on the Internet-based victimisation of older adults, as it poses a significant potential threat to growing social, economic, public and political concerns in India and USA. This paper also explores a comparative study on the legislative framework to combat elder abuse in the digital age in India and USA. Against this background, the authors wanted to consider whether it would be possible to make sound public policies in this area using the existing research infrastructure.

Keywords: Cybercrime, Digital Era, Elderly, and Victimisation

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## INTRODUCTION

Construction procurement is a pivotal aspect of the construction industry and involves significant financial investment, numerous stakeholders, and complex project management. This stage sets the foundation for the entire project, impacting its efficiency, success, and the nature and frequency of disputes that may arise. Disputes are almost inevitable, given the complexities involved in construction projects, making effective dispute resolution mechanisms essential. This study delves into the intricate relationship between construction procurement and dispute resolution, examining how various procurement methods influence disputes and the effectiveness of different dispute resolution techniques.

### Types of Construction Procurement

Construction procurement methods are designed to manage acquiring the resources and services necessary to complete construction projects. These methods can be broadly categorized as traditional, design and build, management contracting, and public-private partnerships (PPP). Each method has unique characteristics that influence the nature and frequency of the disputes.

#### Traditional Procurement

Traditional procurement, also known as design-bid-build, involves separating the design and construction phases. The client first engages designers in creating detailed plans and then hires contractors through a competitive bidding process to execute the construction based on these plans. This method delineates roles and responsibilities

but can result in disputes due to design errors, changes, and misunderstandings between the design and construction teams.

#### Design and Build

In the design and build procurement method, a single contractor is responsible for both the design and construction. This integrated approach can streamline the project and reduce disputes related to design errors and ambiguities because the same entity handles both aspects. However, this method may lead to conflicts over cost and quality, particularly if the contractor prioritizes cost savings over design integrity, potentially compromising the project standards.

#### Management Contracting

Management contracting involves hiring a management contractor to oversee the entire project on their behalf. The management contractor coordinates with various trade contractors that perform specific tasks. This method can facilitate smooth project execution through professional management and oversight. However, it can also lead to disputes over the responsibilities and performance of trade contractors, requiring effective coordination and communication to mitigate potential conflicts.

#### Public-Private Partnerships (PPP)

Public-private partnerships (PPP) involve collaboration between the public and private sectors to deliver projects, often encompassing long-term contracts with detailed specifications and performance standards. These complex arrangements are designed to leverage the strengths of both

sectors. Disputes in PPP projects can arise from changes in public policy, financial issues, and differing partner objectives. Effective risk management and clear contractual terms are crucial to mitigate disputes in these projects.

### **Factors Influencing Disputes in Construction Procurement**

Several factors inherent in construction procurement influence the nature and frequency of disputes. These factors include contract clarity, project complexity, stakeholder communication, and risk allocation. Understanding these factors is essential for devising strategies to effectively manage and resolve disputes.

#### **Contract Clarity**

Contracts are the foundation of construction projects and define the scope, responsibilities, deadlines, and quality standards. Clear and comprehensive contracts are crucial to minimize disputes. Ambiguous terms, incomplete specifications, and poorly defined roles can lead to misunderstanding and disagreement. Effective procurement should ensure that contracts are detailed and clear, thus providing a solid framework for project execution and dispute resolution.

#### **Project Complexity**

The complexity of construction projects, including their size, technological requirements, and number of stakeholders involved, can increase the likelihood of disputes. More complex projects often require more intricate procurement processes and robust dispute resolution mechanisms to

handle a higher risk of conflict. Complex projects may involve multiple phases, various subcontractors, and advanced technologies, all of which add layers to potential disputes.

#### **Stakeholder Communication**

Effective communication among stakeholders is essential for reducing disputes. Procurement processes that facilitate open and transparent communication can help prevent misunderstandings and foster collaborative problem-solving. Poor communication, however, often leads to conflicts and delays. Ensuring that all parties are well informed and aligned with project goals is crucial in mitigating disputes and ensuring smooth project progression.

#### **Risk Allocation**

The allocation of risks in construction contracts significantly affects the occurrence of disputes. Contracts that unfairly allocate risks to one party can lead to resentment and dispute. Balanced risk allocation, where risks are assigned to the parties best able to manage them, can reduce the potential for conflict. Understanding and managing risks proactively through well-structured contracts are essential for minimizing disputes and ensuring project success.

#### **Dispute Resolution Mechanisms in Construction**

Dispute resolution in construction involves various methods, each of which has its advantages and limitations. The choice of resolution method depends on the nature of the dispute, the procurement method used, and the relationship between the parties

involved. Primary dispute resolution mechanisms include negotiation, mediation, arbitration, and litigation.

### **Negotiation**

Negotiation is the first step in dispute resolution and involves direct discussions between parties to resolve their differences amicably. Effective negotiation relies on the willingness of parties to compromise and the clarity of contract terms. In procurement methods where relationships are long-term, such as PPP, negotiation can be particularly effective. Successful negotiation can save time and costs and maintain relationships and project momentum.

### **Mediation**

Mediation involves a neutral third party that facilitates discussions between disputing parties to help them settle. This is a flexible and confidential process that can preserve relationships and provide acceptable solutions. Mediation is effective in disputes arising from management contracting, designing, and building projects, where ongoing collaboration is critical. The mediator helps parties explore potential solutions, fostering a cooperative approach to dispute resolution.

### **Arbitration**

Arbitration involves a neutral arbitrator who hears both sides of the dispute and makes binding decisions. It is less formal than litigation and can be faster and more cost-effective. Arbitration is often used in traditional procurement and PPP, where formal resolution processes are necessary

because of the complexity and high stakes involved. The binding nature of arbitration decisions provides finality, which can be beneficial for resolving complex disputes efficiently.

### **Litigation**

Litigation is a formal legal process in which disputes are resolved in a court. It is typically the last resort, owing to its high cost, lengthy duration, and adversarial nature. However, litigation may be necessary for complex disputes involving significant financial and legal implications, which are often seen in large-scale traditional procurement projects. The formal court process provides a structured and legally binding resolution that ensures that all aspects of the dispute are thoroughly examined and adjudicated.

## **Relationship Between Procurement Methods and Dispute Resolution**

The choice of procurement method can significantly influence the type and frequency of disputes as well as the most effective resolution mechanisms. Understanding the nuances of each procurement method and its impact on dispute resolution is essential for effectively managing construction projects.

### **Traditional Procurement**

Traditional procurement often leads to design disputes and project delays. The clear separation of design and construction roles can create opportunities for misunderstanding and conflict. Litigation and arbitration are common in traditional procurement, as parties seek formal resolutions for contractual breaches and compensation claims. However,

clear contract terms and effective communication can mitigate these disputes, thereby reducing the need for formal dispute resolution.

### **Design and Build**

Design and build procurement can reduce disputes related to design errors, but may increase conflicts over cost and quality. The integrated nature of this method requires close collaboration between the design and construction teams. Mediation and negotiation are often effective in designing and building projects because they allow parties to address issues collaboratively without compromising project timelines and relationships. Effective project management and clear communication are key to minimizing disputes using this procurement method.

### **Management Contracting**

In management contracting, disputes often arise from coordination issues and trade contractors' performance. The involvement of multiple contractors requires effective supervision and communication. Mediation and negotiation are preferred in management contracting given the ongoing collaboration required among multiple stakeholders. Arbitration can also be used in more significant disputes that require binding decisions. The management contractor plays a crucial role in facilitating communication and resolving conflicts, thereby ensuring that the project progresses smoothly.

### **Public-Private Partnerships (PPP)**

PPP projects, due to their complexity and long-term nature, PPP projects are prone to disputes over financial issues, performance standards, and policy changes. The collaborative nature of PPP requires effective risk management and clear contractual terms. Negotiation and mediation are essential in these projects to maintain long-term partnerships and proactively address issues. Arbitration is also commonly used because of the formal nature of PPP contracts, which provide a binding resolution to disputes. The success of PPP projects often hinges on their ability to manage and resolve disputes effectively, ensuring that both public and private sector partners can achieve their objectives.

## **CASE STUDIES**

### **Case Study 1: Heathrow Terminal 5**

The construction of Heathrow Terminal 5 is a notable example of a design and build procurement method. The project was completed on time and within the budget, largely due to effective risk management and a collaborative approach. Dispute resolution is primarily managed through negotiation and mediation, highlighting the importance of proactive communication and collaboration in complex projects. The use of a single contractor for design and construction facilitated streamlined decision-making and reduced the potential for disputes related to design errors and ambiguities.

The construction of Heathrow Terminal 5 is an exemplary case of the design and build procurement method. The project's success in completing on time and within the budget is attributed to effective risk management and a

collaborative approach to dispute resolution, primarily through negotiation and mediation. This case study highlights the benefits of integrating design and construction under one contractor, which reduces the potential for dispute.

### **Case Study 2: Wembley Stadium**

Construction of the Wembley Stadium involved traditional procurement, leading to significant disputes over design errors, delays, and cost overruns. The project faced multiple litigations, underscoring the challenges of traditional procurement methods and the need for clear contracts and effective communication to manage disputes. The separation of design and construction roles contributes to misunderstandings and conflicts, demonstrating the importance of integrated project management and proactive dispute resolution strategies.

Wembley Stadium's construction faced significant disputes due to traditional procurement, leading to design errors, delays, and cost overruns. Multiple litigations underscore the challenges of traditional procurement and emphasize the need for clear contracts and effective communication. This case study serves as a cautionary tale for managing large-scale projects by using traditional methods.

### **Case Study 3: London Olympics 2012**

The London Olympics 2012 utilized a combination of procurement methods, including management contracting and PPP. The successful delivery of the project was

attributed to robust risk management, clear communication, and effective dispute resolution mechanisms including mediation and arbitration. This case study demonstrated the importance of adaptable procurement strategies and the use of multiple dispute-resolution methods in large-scale projects. The collaborative approach and proactive management of disputes ensured that the project was completed on time and within the budget, meeting the high standards required for an international event.

The successful delivery of the London Olympics 2012, using a combination of management contracting and PPP, is a testament to the importance of adaptable procurement strategies and effective dispute resolution mechanisms. The use of mediation and arbitration facilitated the project's completion on time and within the budget, illustrating the benefits of a collaborative and flexible approach.

### **Case Study 4: Sydney Opera House**

The Sydney Opera House is an example of a project that faced significant disputes owing to the traditional procurement method. The project experienced extensive delays and cost overruns, leading to disputes among clients, designers, and contractors. The use of litigation to resolve these disputes highlights the challenges of traditional procurement in complex projects. This case underscores the importance of clear contracts, effective communication, and proactive risk management in preventing and resolving disputes.

The Sydney Opera House project experienced extensive delays and cost overruns due to

traditional procurement, leading to significant disputes between the client, designers, and contractors. This case study highlights the importance of clear contracts, effective communication, and proactive risk management for preventing and resolving disputes in complex projects.

### **Case Study 5: Dubai Metro**

The Dubai Metro project, procured through the PPP model, exemplifies the benefits and challenges of this procurement method. The project involved collaboration between public- and private-sector partners, with disputes arising over financial issues and performance standards. The use of negotiation and arbitration facilitated the resolution of these disputes, maintained partnerships, and ensured project completion. This case highlights the importance of effective risk management and clear contractual terms for managing disputes in PPP projects.

The Dubai Metro project, procured through a PPP model, showcases the benefits and challenges of this method. Despite disputes over financial issues and performance standards, the project's success was achieved through negotiation and arbitration. This case study underscores the importance of effective risk management and clear contractual terms for managing disputes in PPP projects.

### **CONCLUSION**

The relationship between construction procurement and dispute resolution is complex and multi-faceted. Different procurement methods inherently carry varying risks and potential disputes,

necessitating tailored dispute-resolution approaches. Clear contracts, effective communication, balanced risk allocation, and proactive dispute resolution mechanisms are crucial in managing disputes in construction projects. By understanding these dynamics, stakeholders can choose appropriate procurement methods and dispute-resolution strategies to enhance project success and minimize conflicts.

The references listed provide a comprehensive overview of the relationship between construction procurement and dispute resolution. By understanding legal frameworks, best practices, and case studies, construction professionals can better manage procurement processes and resolve disputes effectively. These resources collectively highlight the importance of clear contracts, effective communication, balanced risk allocation, and proactive dispute resolution mechanisms to ensure the successful delivery of construction projects.

In conclusion, effective construction procurement requires careful consideration of the potential for disputes and the implementation of strategies to manage and resolve them. By adopting clear and comprehensive contracts, facilitating open communication, balancing risk allocation, and utilizing appropriate dispute resolution mechanisms, construction projects can be managed more effectively, thereby reducing the likelihood and impact of disputes. Insights gained from various case studies further emphasize the importance of these factors in ensuring the successful delivery of construction projects.

## REFERENCES

### Books and Journal Articles

**1. Ashworth, A., & Perera, S. (2018): Contractual Procedures in the Construction Industry. 7th ed. Routledge.**

This book provides an in-depth understanding of the various contractual procedures within the construction industry, discussing the implications of different procurement methods and the resulting disputes. It is particularly useful for understanding how traditional procurement methods can lead to increased conflicts owing to the separation of design and construction roles.

**2. Fenn, P., Lowe, D., & Speck, C. (1997): Conflict and Dispute in Construction. Construction Management and Economics, 15(6), 513-518.**

This journal article explores the nature of conflicts and disputes in construction, examining the factors that contribute to disputes and the effectiveness of various resolution methods. It provides a theoretical framework for understanding the dynamics of construction disputes and their resolution.

**3. Murdoch, J., & Hughes, W. (2008): Construction Contracts: Law and Management. 4th ed. Taylor & Francis.**

This comprehensive text covers the legal aspects of construction contracts and the management of construction projects. It delves into the relationship between procurement methods and dispute resolution

and offers practical insights and legal precedents.

**4. Cheung, S. O., & Yiu, T. W. (2006): Are Construction Disputes Inevitable? IEEE Transactions on Engineering Management, 53(3), 456-470.**

This article examines the stability of disputes in construction projects and evaluates the factors that lead to conflicts. It also discusses the effectiveness of dispute-resolution mechanisms and provides empirical data and analysis.

**5. Cushman, R. F., & Carter, J. D. (1994): Construction Litigation: Representing the Owner. Wiley Law Publications.**

This book focuses on the litigation process in construction disputes, particularly from the perspective of the project owner. It discusses various procurement methods and the legal challenges associated with each and provides case studies and legal strategies.

### Legal Framework and Standards

- **Office of Government Commerce (OGC). (2007): Achieving Excellence in Construction Procurement Guide. OGC Publications.**

This guide provides comprehensive standards and best practices for procurement in the construction industry, emphasizing the importance of clear contracts and effective dispute-resolution mechanisms. This serves as a practical resource for professionals involved in construction procurement.



- **Society of Construction Law (SCL). (2011): Delay and Disruption Protocol. SCL Publications.**

The SCL Delay and Disruption Protocol offers guidelines for managing and resolving disputes related to delays and disruptions in construction projects. It provides practical advice and standard procedures to minimize conflicts and facilitate effective dispute resolution.

- **International Federation of Consulting Engineers (FIDIC). (1999): Conditions of Contract for Construction. FIDIC Publications.**

The FIDIC Conditions of Contracts are widely used in international construction projects and provide a standardized approach to contract management and dispute resolution. This document is essential for understanding the legal framework governing construction contracts and for resolving disputes.

- **Construction Industry Council (CIC): CIC Model Adjudication Procedure. Available at: [www.cic.org.uk](http://www.cic.org.uk)**

The CIC Model Adjudication Procedure provides guidelines for the adjudication process in construction disputes. It is a valuable resource for professionals seeking structured and efficient methods for resolving conflicts.

- **American Arbitration Association (AAA): Construction Industry Arbitration Rules and Mediation Procedures. Available at: [www.adr.org](http://www.adr.org)**

The AAA offers comprehensive arbitration rules and mediation procedures specifically designed for the construction industry. This resource provides practical guidance for managing disputes through arbitration and mediation, ensuring fair and efficient resolution.

## Online Resources

- **Royal Institution of Chartered Surveyors (RICS): RICS Dispute Resolution Service. Available at: [www.rics.org](http://www.rics.org)**

The RICS Dispute Resolution Service offers a range of dispute resolution mechanisms tailored to the construction industry. This resource provides information on mediation, arbitration, and adjudication services, supporting professionals in effectively managing and resolving disputes.