

**CRITICAL ANALYSIS OF ALTERNATIVE
DISPUTE RESOLUTION METHODS USED IN THE
CONSTRUCTION INDUSTRY IN SRI LANKA**

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University of Moratuwa, Sri Lanka.
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Degree of Master of Philosophy

Department of Building Economics

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DECLARATION

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ABSTRACT

Critical Analysis of Alternative Dispute Resolution Methods used in the Construction Industry in Sri Lanka

Construction disputes are of highly technical in nature and in fact intensive and multifaceted than other commercial disputes. With reference to the literature review, it is obvious that disputes in construction industry are may occur in certain circumstances. With the increase in construction activities in Sri Lanka, the construction industry of Sri Lanka needs a fast and cost effective dispute resolution method. The litigation method is the traditional way of dispute resolution and drawbacks of litigation have opened up the ‘Alternative Dispute Resolution’ (ADR) methods. The desirable features of ADR methods are fast, inexpensive, fair, simple, flexibility, confidentiality, minimum delay. However, ADR methods are also having issues like drawbacks and pitfalls apart from their respective advantages. This research attempts to address the issues and conflicting areas of ADR methods in the Sri Lankan construction industry. Attempts have been made to identify and analyse problematic areas which are highly influencing the ADR methods. The aim of this research is to evaluate ADR methods and suggest improvements to the ADR methods in the Sri Lankan construction industry.

This research is the result of surveys that were conducted to understand the experiences and usages of ADR methods. Two rounds of Delphi method surveys were conducted in order to identify priorities and to observe the extended review of panel of industry experts who were engaged in ADR methods in the construction industry. The panel consisted the ADR facilitators, professionals, consultants, resource persons and contractors. Fifteen problematic areas and twelve potential solutions for improvements of ADR methods were identified during the Delphi survey round one. They were prioritised during Delphi method survey round two. Semi-structured interviews were used to get the extended view of the panel on top ten issues which were ranked in Delphi round two.

A pivotal conclusion of this research is that the stakeholders in the construction industry prefer “negotiation” as an ADR method. Usages and awareness about negotiation were highly appreciated by the construction industry professionals. Professionals had a low level of satisfaction on the current practice of arbitration.

Overall expectation of the construction industry by application of ADR methods is to settle disputes within a minimal time without damaging the reputation of involved parties. It should cater to that expectation by bridging the gaps such as not having a governing authority for ADR methods and also lower knowledge and awareness about ADR methods and in a case not having legal assent for some methods and low direction in standards conditions of contract. In this research ADR methods have been ranked as importance of critical attributes in ADR methods. It was revealed that construction industry expects quick remedy on than the less cost solution. It further revealed that the modernized stair-step model of dispute resolution strategy is the best. The research further makes recommendations in order to make ADR methods more effective and efficient.

Keywords: *Disputes, Construction industry, ADR methods, Problematic areas, Critical attributes*

DEDICATION



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To my mother and father.....

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List of Abbreviations

AIR	:	All India Law Reports
ADR	:	Alternative Dispute Resolution
BLR	:	British Law Reports (England)
CMCSL	:	Commercial Mediation Center of Sri Lanka
DAB	:	Dispute Adjudication Board
DRB	:	Dispute Review Board
DB	:	Dispute Board
FAA	:	Federal Arbitration Act (USA)
FIDIC	:	International Federation of Consulting Engineers
HGCRA	:	Housing Grants Construction and Regeneration Act (UK)
HK	:	Hong Kong
HKIAL	:	Hong Kong International Arbitration Centre
ICLP	:	Institute for the Development of Commercial Law and Practice
ICTAD	:	Institute for Construction Training and Development
ISM	:	Institute of Surveyors (Malaysia)
JCT	:	Joint Contract Tribunal
NLR	:	New Law Reports (Sri Lanka)
NSW	:	North South Wales
NZ	:	New Zealand
QS	:	Quantity Surveyor
RICS	:	Royal Institution of Chartered Surveyors
SBD	:	Standard Bidding Document
SLLR	:	Sri Lanka Law Reports
SG	:	Singapore
SLNAC	:	Sri Lanka National Arbitration Centre
UK	:	United Kingdom
USA	:	United States of America