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BARRIERS FOR IMPLEMENTING DISPUTE REVIEW BOARD (DRB) METHOD TO SRI LANKAN CONSTRUCTION INDUSTRY

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ABSTRACT

In Sri Lanka, dispute resolution methods in construction contracts are Negotiation, Mediation, Adjudication, and Arbitration. Although the Dispute Review Board (DRB) method has been successfully used internationally for more than 30 years, it has rarely been applied in domestic contractual disputes. Thus, this research was conducted to identify the barriers hindering the implementation of the Dispute Resolution Board (DRB) mechanism in the Sri Lankan construction industry and to provide recommendations to overcome these barriers. This research was deemed necessary because the current dispute resolution methods could not effectively resolve contractual conflicts. Despite introducing DRB through Dispute Adjudication Boards (DAB), its potential benefits have not been fully realised in Sri Lanka. To achieve the purpose of the study, a comprehensive literature review was conducted first, and then a preliminary survey to identify the barriers to the implementation of DRB in the Sri Lankan construction industry. Subsequently, a questionnaire was administered to 44 professionals engaged in client and contracting organisations. The research findings revealed that the main barriers to the implementation of the DRB mechanism are unawareness of the concept of DRB, clients considering DRB as a burden and hassle for them, additional costs to be incurred, and lack of experience. Accordingly, the study recommends increasing the awareness of the DRB at the national level with the support of authorities to utilise it as a valuable alternative for resolving disputes in the Sri Lankan construction industry.

Keywords: *Barriers; Construction Industry; Disputes; Dispute Review Board (DRB); Sri Lanka.*

1. INTRODUCTION

Construction projects have become increasingly complex and involve many parties with conflicting objectives. The owner, for example, would like a project to be cost-effective and speedy, while the contractor requires to minimise losses and maximise profits (Hardjomuljadi, 2020). Therefore, disputes in construction are inevitable. Vishwanathan et al. (2020) explain that disputes often lead to project failures, loss of time and costs, and damage to stakeholder relationships. Further to the authors, if the disputes are not

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resolved rapidly, they become severe and ultimately lead to dispute resolution proceedings which are time and cost-consuming. In recent years, significant efforts have been made to establish efficient dispute resolution mechanisms, with a particular emphasis on addressing issues related to cost, time, and enforceability. Despite these efforts, the traditional dispute resolution processes still face several limitations in practical applications (De Alwis, et al., 2016).

One of the significant drawbacks of traditional dispute resolution mechanisms is the cost associated with resolving a dispute. In many cases, the expenses involved in litigation, arbitration, or mediation can be excessively high, making it difficult for parties to access. To address these challenges, there is a need to explore new dispute resolution methods that are more efficient, cost-effective, and enforceable. Disputes resolution involves both binding and non-binding approaches, such as; arbitration and litigation as binding, negotiation, conciliation, and mediation as non-binding methods (Chong & Zin, 2012). However, the employers, contractors, and design professionals in the industry have comprehended the hours and dollars as attorney and expert fees, court costs, loss of staff time, and additional overhead expenses due to dispute resolution (De Alwis et al. 2016).

Further, these methods suffer from two significant limitations. First, the trust between parties can be severely tested or even destroyed during the resolution process. Second, the time and expenses involved in resolving a dispute can negatively impact the expected benefits of the project for the involved parties. Consequently, there is a growing interest in exploring alternative approaches to dispute resolution that can be initiated either before or soon after a conflict arises. This trend has emerged as a response to the limitations of traditional dispute resolution methods, with a focus on promoting early intervention, communication, and collaboration between parties in conflict (Gunawansa, 2008). As a result, Dispute Review Board (DRB) has been invented to resolve or avoid disputes and to assist the project parties in mitigating the adverse effects from the beginning of a project. Accordingly, this research aims to critically analyse the applicability of the DRB process to the Sri Lankan construction industry.

2. LITERATURE REVIEW

Construction projects are subjected to prolonged execution periods and diverse stages where economic circumstances and legal and governmental regulations may change unexpectedly. These factors are difficult to anticipate or account for at the time of contract signing, which can impact the management and execution of the project, as well as the contractual obligations of all parties involved (Al-Zwainy, et al., 2018). Consequently, such circumstances often result in construction disputes. In such situations where the disputes cannot be settled amicably, the parties must go to court or consider alternative dispute settlement procedures (Keršulienė, et al., 2010). Litigation involves third parties, such as lawyers and judges, who know the law but may lack of knowledge about construction projects (Alaloul, et al., 2019). However, in the past decades, people have increasingly relied on the judicial system to resolve disputes, which has led to greater trust in its decision-making processes. As a result, there was a significant increase in the volume of cases, resulting in an overload of the courts and a more rigid formalism in judicial decisions (Yaskova & Zaitseva, 2020). Hence, construction experts believe litigation is not a suitable method for dispute resolution in the construction industry, as construction projects are built upon good relationships between parties (Alaloul et al.

2019). Therefore, construction professionals prefer alternative dispute resolution methods to resolve their disputes instead of litigation.

Different ADR methods are available in the Sri Lankan construction industry, including partnering, med/arb, mini-trials, early neutral evaluation, mediation, adjudication, and the deployment of dispute review boards (Illankoon et al., 2022). Amongst, the DRB is identified as an appropriate method as it operates on-site and resolves disputes before leaving the site. According to the Delphi study by Gad and Shane (2012), Asian countries prefer DRB over adjudication, litigation, early neutral evaluation, and mini-trials. Further, the DRB achieved an impressive success rate of 98%, with all conflicts and disputes being resolved before the completion of the contract (Alaloul et al. 2019).

2.1 DRB METHOD IN BUILT ENVIRONMENT

The DRB is a pioneering non-confrontational project management approach aiming to prevent or resolve disputes throughout the project's life cycle. Unlike other alternative dispute resolution methods, this technique intends to proactively avoid conflicts before they occur and promptly address them as they arise. This approach sets itself apart by employing a procedure to minimise disputes and deal with them as soon as possible (Alaloul et al. 2019). The DRB can comprise a single person or a panel of three or five members. It is prudent to keep the number of members to an odd number; so that it is possible to achieve a majority decision where the panel cannot reach unanimity (FIDIC, 2006). When selecting the members, the contractor has to select one member and the employer another, with each approving the other's choice. Then the two chosen DRB panellists select the third member. Members of the DRB are highly qualified with substantial engineering or construction experience (Harmon, 2003). Harmon (2009) emphasised that the project documents stipulate that DRB panellist must possess a minimum of 10 years of professional experience in their respective fields and significant experience in the particular type of construction involved in the contract. Hence, it has been identified that DRB offers more reliable and appropriate solutions for resolving construction-related disputes compared to litigation and other alternatives.

2.2 BARRIERS TO THE IMPLEMENTATION OF DRB

Oyuela and Bley (2010) identified several barriers to the successful implementation of DRB in Chile, such as resistance to change, lack of knowledge and experience in using DRB, entrenched arbitration or trial processes, and client reluctance to engage in dispute resolution. Clients may perceive dispute resolution as burdensome and restrictive, reducing their margin of movement. Further, Chong and Chong (2009) identified major barriers to implementing DRB in the Malaysian construction industry, which can be categorised under three headings: awareness, cost, and cultural attitude. The lack of awareness of DRB among stakeholders in the construction industry is a significant barrier, as is the perceived high cost of using DRB compared to traditional dispute resolution methods. Moreover, cultural attitudes toward dispute resolution in Malaysia may also hinder the uptake of DRB.

To overcome these barriers, it is essential to increase awareness and education about DRB among stakeholders in the construction industry. It is also vital to provide cost-effective DRB services and to address cultural attitudes toward dispute resolution. Effective communication and collaboration among all parties involved in construction projects can also help to minimise disputes and facilitate the successful implementation of DRB

(Gamage, 2022). As the author emphasised, one of the major challenges was the lack of recent studies related to project communication. Therefore, the literature emphasises the need for context-specific research to better understand the barriers and challenges in implementing DRB as a dispute-resolution method in the construction industry.

3. RESEARCH METHODOLOGY

The research process involved conducting a background study, identifying the research problem, conducting a literature review, designing the research methodology, collecting data, and analysing the data. First and foremost, a background study was carried out to gather information about the research topic: ADR methods and their evolution, the concept of DRB, the DRB procedure manual, the advantages of DRB, and the disadvantages of DRB. Then Barriers to the implementation of DRB were recognised.

A preliminary survey was conducted to verify the literature findings and find new barriers. Altogether 14 barriers were finalised from the preliminary survey. Then a questionnaire survey was conducted to ascertain the views of 44 professionals engaged in the client and the contracting organisations. In this questionnaire, respondents were asked to evaluate the importance of each barrier to implementation by assigning a numerical value based on its perceived criticalness. Data analysis was done by using the Relative Importance Index (RII). This study has identified the most significant barriers to implementing DRB in the Sri Lankan construction industry. Then the interview was conducted with an expert to find possible suggestions to overcome those barriers.

4. ANALYSIS AND RESEARCH FINDINGS

The findings of the questionnaire survey identified 42 barriers in total from the perspectives of client, to implementing DRB in the Sri Lankan context. Those identified barriers were categorised under three main sections; Client, Contractor, and Overall. Overall sector comprised both client and the contractor in equal proportions. Findings are shown in Table 1.

Table 1: Most critical barriers – Client's perspective

Barriers to the Implementation	RII (%)	Rank
Construction industry players from bottom to top-level management are unaware of the DRB	82.73	1
Lack of experience in its use	76.36	2
Clients consider DRB as an additional cost to the project	75.45	3
Clients believe that DRB is going to reduce their margin of movement and that it will become a burden and hassle for them	71.82	4
DRB decisions cannot be enforced in the same way as Arbitration awards are considered	64.55	5
Parties believe that the mere presence of a DRB does not encourage avoiding contractor claims and disputes	60.00	6
Arbitration or other dispute resolution methods are entrenched in practice	55.45	7
There are a smaller number of mega construction projects in Sri Lanka, where DRB service is much more important	55.45	8
Sri Lankan culture prefers negotiating to solve problems rather than refereeing to a third party.	44.55	9

Barriers to the Implementation	RII (%)	Rank
The number of disputes which occur and the seriousness of them is not that significant in the Sri Lankan construction industry	40.91	10
Resistance to change	38.18	11
Clients prefer to postpone the possible dispute resolution	35.45	12
The DRB's mission is limited to the contract's life	34.55	13
Some arbitration institutions in Sri Lanka are adverse to having rules on the use of DRBs	30.91	14

According to the ranking, the most critical barriers to DRB implementation in the client sector were a lack of awareness and knowledge of clients in the construction sector on the DRB mechanism. Moreover, some construction clients believe that having DRB incurs additional cost and burdens to the project. The DRB should be appointed at the start of the project and remain in place throughout the construction period, regardless of whether disputes arise or not. However, this active involvement of DRB through regular site visits, periodic meetings, documentation reviews, and assistance in the potential issues during the construction process leads to fewer disputes. The findings revealed that despite being an established practice, clients in the construction industry still favour arbitration over DRB. Consequently, unlike arbitration, DRB's non-binding decision also discourages employers from proceeding with DRB.

The barriers to implementing DRB were then analysed from the contractor's perspective, and the findings are presented in Table 2.

Table 2: Most critical barriers – Contractor's perspective

Barriers to the Implementation	RII (%)	Rank
Clients believe that DRB is going to reduce their margin of movement and that it will become a burden and hassle for them	80.91	1
Construction industry players from bottom to top-level management are unaware of the DRB	77.27	2
Clients consider DRB as an additional cost to the project	74.55	3
Lack of experience in its use	73.64	4
Clients prefer to postpone the possible dispute resolution	66.36	5
Parties believe that the mere presence of a DRB does not encourage avoiding contractor claims and disputes	65.45	6
There are a smaller number of mega construction projects in Sri Lanka, where DRB service is much more important	63.64	7
Arbitration or other dispute resolution methods are entrenched in practice	62.86	8
Sri Lankan culture prefers negotiating to solve problems rather than refereeing to a third party.	60.00	9
Resistance to change	51.82	10
DRB decisions cannot be enforced in the same way as Arbitration awards are considered	48.18	11
The number of disputes that occur and their seriousness is not that much significant in the Sri Lankan construction industry	40.91	12
The DRB's mission is limited to the contract's life	35.45	13
Some arbitration institutions in Sri Lanka are adverse to having rules on the use of DRBs	32.73	14

Unlike the client, the contractor's key barrier was that they considered DRB as a burden or hassle to them. This perception stems from a lack of knowledge and experience of contractors with DRBs. Many construction industry players, including bottom to top-level management, are unaware of DRBs, making it challenging to introduce and implement them effectively. Moreover, contractors consider DRBs as an additional cost to the project, further discouraging their implementation. This perception can be overcome by educating them on the benefits of DRBs, such as reducing project delays, avoiding costly litigation, and improving project outcomes.

Another significant barrier is the lack of experience in using DRBs. This lack of experience makes it challenging to introduce DRBs and implement them effectively. Training and education programs can help overcome this barrier by providing industry players with the necessary knowledge and skills to use DRBs effectively. Resistance to change is another barrier that must address in the industry. Resistance to change can come from different levels, including both employers and employees in a contracting organisation. Overcoming this barrier requires a clear understanding of the benefits of DRBs and effective communication to encourage acceptance and adoption.

Moreover, the contractors' opinion was that the clients prefer to postpone the dispute resolution, and therefore, they do not encourage having DRB readily available on site. However, they have given a lower ranking to the presence of arbitration, as they believe it is not affected the implementation of DRB in the Sri Lankan context. In Sri Lanka, negotiation is a preferred problem-solving method, making it challenging to introduce and implement DRBs effectively. Educating industry players on the benefits of DRBs and how they complement negotiation can help overcome this barrier. Additionally, there is a perception that DRBs do not encourage avoiding contractor claims and disputes. This perception can be addressed by emphasising the DRB's role in reviewing disputes and providing recommendations to avoid future conflicts. It was revealed that the DRB decisions could not be enforced like arbitration awards, which can discourage their use. Overcoming this barrier requires improving the enforcement mechanisms for DRB decisions, such as incorporating them into contracts and enforcing them through the court system. Nevertheless, clients and contractors have given the lowest ranking to the statement of DRB's mission limited to the contract's life and adverse rules of arbitration institutions in Sri Lanka to the DRB.

Then considering the overall response from both client and contractor in equal proportions, the barriers were reordered in Table 3.

Table 3: Critical Barriers to the Implementation as Overall Response

Barriers to the Implementation	RII (%)	Rank
Construction industry players from bottom to top-level management are unaware of the DRB	80.00	1
Clients believe that DRB is going to reduce their margin of movement and that it will become a burden and hassle for them	76.36	2
Clients consider DRB as an additional cost to the project	75.00	3
Lack of experience in its use	75.00	4
Parties believe that the mere presence of a DRB does not encourage avoiding contractor claims and disputes	62.73	5
There are a smaller number of mega construction projects in Sri Lanka, where DRB service is much more important	59.55	6

Barriers to the Implementation	RII (%)	Rank
Arbitration or other dispute resolution methods are entrenched in practice	59.07	7
DRB decisions cannot be enforced in the same way as Arbitration awards are considered	56.36	8
Sri Lankan culture prefers negotiating to solve problems rather than refereeing to a third party.	52.27	9
Clients prefer to postpone the possible dispute resolution	50.91	10
Resistance to change	45.00	11
The number of disputes that occur and their seriousness is not that much significant in the Sri Lankan construction industry	40.91	12
The DRB's mission is limited to the contract's life	35.00	13
Some arbitration institutions in Sri Lanka are adverse to having rules on the use of DRBs	31.82	14

The findings indicate that the most critical barrier to the implementation of DRB in Sri Lanka is the lack of awareness about the concept of DRB in the country. In the literature also, the lack of awareness was highlighted. Therefore, it can be identified that, not only in Sri Lanka, but also in many countries like Chile and Malaysia, there is a deficiency in the level of exposure, educational programs, and industry practices with regard to the DRB as a dispute-resolution method. Further, the owners and contractors involved in the construction process are unfamiliar with DRB, its benefits, and its operational procedures for resolving disputes. In particular, industry professionals are unaware of the significant advantage of DRB as a mechanism for mitigating disputes. In addition, both the literature and the findings revealed the resistance to change as a barrier to implementing the DRB. However, while the literature mentioned resistance to depart from the established methods such as arbitration and litigation, the findings emphasised resistance as clients view DRB as a burden and an inconvenience. This revealed that the concerns and factors behind resistance to DRB may vary in different contexts. In other countries, since they are more familiar with other dispute resolution methods including arbitration and litigation, and have established processes and procedures for those in place for handling disputes, introducing a new method like DRB would disrupt their existing practices. In Sri Lanka, clients may view the implementation of DRB as an additional step or process which could delay the project progress. They may be concerned about the time and effort required to engage in the DRB process and the potential impact on project timelines, and could stem from the belief that it is hindering the smooth execution of the construction.

Furthermore, the literature identified the high cost of using DRB compared to other dispute resolution methods as a barrier. Consequently, the findings of the study also discovered the additional costs incurred and the lack of experience in utilising DRB contribute significantly to resistance to its implementation in the industry. This could be involving high procedural costs including expert fees, conducting meetings, site visits, reviewing documents, and preparing reports. Moreover, the findings reveal that clients and contractors believe the DRB is more appropriate for mega projects. Since there are relatively few mega projects in Sri Lanka, the perception is that DRB is not widely used in the industry. Further, they have compared it with the arbitration practice in the current industry. Hence, it was noted that the DRB is not widely familiar in Sri Lanka, unlike countries including the UK, USA, Australia, China, France, New Zealand, Bangladesh, Hong Kong, and India. One of the reasons identified for the above is, the DRB decisions cannot be enforced in the same manner as arbitration awards unless it is mandated in the

contract. Therefore, the industry practitioners believe that the effectiveness and efficiency of DRB as a dispute-resolution mechanism may be somewhat limited. Despite this limitation, DRB decisions can still serve as valuable evidence in subsequent arbitration or litigation proceedings. Parties' preference to resolve disputes without involving a third party is also identified as a barrier to DRB implementation, although it is less significant compared to other challenges. Additionally, the study identifies that some arbitration institutions in Sri Lanka impose adverse rules that hinder the implementation of DRB in the country.

5. CONCLUSIONS

In line with the literature synthesis, DRB is identified as a well-established dispute resolution method that has unique advantages. As the success of the DRB process became more apparent, it greatly expanded worldwide. Hence, it could be recommended to develop a proper mechanism and incorporate it into the Sri Lankan construction industry. However, 14 critical barriers to the implementation of DRB in the Sri Lankan context were identified through the analysis. Amongst, the lack of awareness in the industry regarding DRB application is at the top. Therefore, organising awareness programs and owner-contractor forums is recommended to enhance the knowledge and attentiveness regarding the DRB application and its benefits in the industry. Further, it is suggested to get the support of CIDA to incorporate the mechanism at the national level and to promote and guarantee the convenience of using the DRB in the projects.

The literature review indicates that DRB is an effective dispute-resolution method with unique advantages and has been widely implemented worldwide. However, in the context of the Sri Lankan construction industry, 14 critical barriers to the implementation of DRB were identified. Amongst, the lack of awareness among industry stakeholders about DRB applications is identified as the most significant barrier. To overcome these barriers and promote the use of DRB in Sri Lanka, it is recommended to conduct awareness programs and owner-contractor forums to enhance knowledge and understanding of the DRB application and its benefits. Additionally, it is suggested to seek support from the Construction Industry Development Authority (CIDA) to incorporate DRB mechanisms at the national level and promote its use in projects. By implementing these recommendations, barriers to the use of DRB can be minimised, and the full advantages of this mechanism can be realised. Ultimately, the research highlights the need to address these barriers to ensure the effectiveness of DRB as a valuable alternative dispute resolution mechanism in the Sri Lankan construction industry.

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