Abstract

The current research “A Study of Alternative Dispute Resolution (ADR) System in Infrastructure Projects for Indian Defence Forces” explores the efficacy of dispute resolution system prevailing in Military Engineer Services (MES) infrastructure contracts and compares it with the best national and international practices to usher in the structural reforms.

The Dispute Resolution in MES Contracts is achieved through Arbitration and subsequent litigation which carries on for years together. However, the government loses majority of Arbitration and subsequent Court cases. At the time of final judgment, the interest liability of government over the principal awarded amount increases astronomically. Even in cases where the government is claimant, the Contractor gets away with his claim of damages and government is not able to recover anything in the long legal battle. This scenario led to explore the research question that “Existing dispute resolution mechanism in infrastructure projects of Indian defence forces needs restructuring”.

The action research was conducted as a descriptive research using Case Study Method, Document analysis and Analytical Method. Sufficient numbers (20) of information rich case studies were conducted along with document analysis of Contract Conditions of major national and international organizations. Thereafter, using analytical method the requisite analysis was carried out to find the solution of the research question and recommend improvements.

Some of the major findings from the current research are as under:
(a) Majority of the disputes are self inflicted by the government side.
(b) Absence of any viable dispute resolution option during construction period blew up issues to full fledged disputes.
(c) Delay in initiation of the Arbitration process weakened the government defence due to transfer of entire team of department officials and untraceable records.
(d) Indiscreet litigation without any valid grounds and over-reliance on the government counsels rather than relying on their own professional acumen lead to losses in court cases.
(e) The root cause of abnormal average dispute span of over 17 years has been an overall unprofessional approach towards dispute resolution.
The strategy to cancel the contracts of slow moving projects to conclude fresh contracts on the risk and cost of the defaulting contractor has been an utter disaster with government recovering only 1% of their total claims.

Post award litigation has been most detrimental aspect of dispute resolution accounting for maximum delays (60% of dispute span) and huge future interest amount (57% of total liability).

Past and pendente lite interest (15%) and future interest (57%) are major constituents of the overall award payments made to the contractor.

Impractical restrictions over the use of Conciliation to resolve contractual disputes have made it non-operational in MES.

The contract conditions in MES are not updated with best national and international practices for motivating avoidance of disputes or resolving them expeditiously.

The analysis and findings point towards serious shortcomings in the Contract Conditions and policies in respect of dispute resolution approach in MES. The research is not just a fault finding mission but has been able to provide authenticate solutions to each problem. Some of the major solutions that the research provides are - Discontinue Risk & Cost strategy, Introduce Dispute Review Board (DRB), Liberalize Conciliation, Introduce Institutional Arbitration, Modify Arbitration Clause, revamp Decision Making policy on implementation of awards, Improving Arbitration Culture, Strategic drive to clear backlog dispute cases, introduction of new contract clauses to avoid liability of past/pendente lite and future interest, new clauses for dispute avoidance and effective implementation of Knowledge Management. These solutions if implemented in true spirit can radically reform the entire dispute resolution process. The dispute span shall be drastically reduced and so would be the liability of government. With a sound and efficient dispute resolution mechanism in place, most essential for infrastructure development of a country, public money catered for infrastructure development of the nation shall not be blocked or wasted in litigations.