The Academic
International Journal of Multidisciplinary Research

An Online Peer Reviewed / Refereed Journal
Volume 4 | Issue 6 | June 2026
ISSN: 2583-973X (Online), SJIF IF(2026): 5.6
Website: www.theacademic.in

Construction Contracts Dispute Avoidance and Resolution – Whether India shall adopt Legislation Similar to Housing Grants, Construction and Regeneration Act 1996, UK.?

Ajaya Kumar K R.

Research Scholar, National Law School of India University Bangalore, India

DOI : https://doi.org/10.5281/zenodo.21469645

ARTICLE DETAILS

Research Paper

Received: 11-05-2026

Accepted: 22-06-2026

Published: 15-07-2026

Keywords:

Construction disputes, Agency theory, Game theory, HGCR Act ,security of payment, Adjudication , Legal Transplants , Teubner, India

ABSTRACT

Construction is synonymous with Disputes. The structural dynamics of the industry, long project period, and asymmetric bargaining power as well as information asymmetry exasperated the dispute potential. Agency Theory, Game theory, Transaction cost economics provide frame work to understands perennial dispute causation in construction contracts. this Arbitration has been not successful due to delays , cost and lack of trust Arbitration takes a back seat with Govt of India and state govt removing arbitration from tender documents and mediation yet to catch up as an effective mode of dispute resolution in India.. Contractors' keenness to cover risk by inflated claims and profiteering is equally met by Client's determination to quality and speed as well as meetings target within budget. India has similar problems , payment delays , of disputes and retention money issues There will be an engagement with the idea of security of payment for construction sector and adjudication for India. The legal transplant without institutionalised developments and political will and judicial acceptance will end up facing issues in Teubner's legal Trilemma. Cust and past of foreign jurisdiction may fail to provide desired results

1.1 Introduction

The construction industry often suffers from payment delays and disputes. In the UK, Lord Denning said that cash flow is the “lifeblood” of construction projects. His view was one of the most important foundational one that led to the Housing Grants, Construction and Regeneration Act 1996, which gives contractors a right to quick payments and fast dispute resolution.

Australia and Singapore were first to have adopted UK law with own innovations. There is a increasing view that India also shall consider adoption of similar statute to address payment problems in construction projects (Kathpalia 2021)

This paper asks: Should India copy the UK law directly?

To answer this, the paper does the following things:

1. In first part explains why disputes happen in construction projects.

2. Literature review reviews type of empirical evidences for disputes

3. whether current litigation and Arbitration finality framework is addressing construction specific liquidity concerns adequately?

4. how payments disputes are addressed in UK and Australian by construction sector specific Security of payment and Adjudication.

5.Uses the theory of Gunther Teubner to show why copying a law from one country to another often fails without adequate structural and institutional studies .

The paper concludes that India cannot simply “cut and paste” the UK law. Instead, India needs a version that fits its own legal and business environment.

This study adopts a qualitative doctrinal research methodology with comparative social legal approach . The legal transplantation is studied with Teubner’s reflexive theory while the origins of dispute is looked with the frame work of transaction cost economics . Agency theory and game theory. The study is analytical and normative in orientation with law reform research in its objective

1.2 Construction Industry has unique liquidity characteristics .

Low profit margin, high risk ,cascade payment structure, levels of contracting , and the contractors initial working capital requirements for mobilization, , material procurement and labor and equipment. Contractors working capital requirement vs billing cycle and the actual payment dates, all tend to create a complex factual matrix which ultimately leads to conflict claims an disputes. The major impact on disputes in construction projects are cost overrun(koc&Gurgun,2022) and time overrun(Atanasov et al.,2022). Time related disputes(Sabri& Torp,2022) destroys existing cordial relationship between project participants,(Aritonang& Simanjuntak,2020) lead to poor construction quality(Li&Cheung,2022), poor project performance(Kalyan et.,el ,2022), consumption of more resources, disputes generating further disputes and significant loss to both clients and contractors(Jagannathan & Delhi 2022)

1.3 Theoretical frame work for disputes causation analysis in construction Industry

Theoretical background for dispute generation consists of -Transaction cost economics , Game theory and Agency theory.The concept of transaction cost analysis was introduced by Ronald Coase(1937) in " The nature of the Firm". This was further developed by (Williamson, 1985,pp 52-61) In chapter 3 Transaction cost Ceconomcis under the title "The Governance of contractual relations" .The economic Institutions of capitalism the author discuss the principle of Transaction Cost economics is discussed. The core dimension of transactions identified by Williamson are

Asset Specificity
Uncertainly
Frequency

. TCE proceeds with two assumptions viz bounded rationality and opportunism i.e. self-interest seeking with guile. These cause claims and fraud in construction contracts.

Asset specificity is very critical to construction projects. The items once erected or equipment which are specific to that project loses its value when it is dismantled and being attempted to utilise in another project. Similarly the velocity of the capital i.e. recycle of money invested in construction returning to the contractor in a reasonable , Bounded rationality and opportunism are core concepts from transaction cost economics (TCE) that explain challenges in construction contracts, where high uncertainty and long durations make complete agreements impossible. Bounded rationality refers to parties' limited ability to foresee all contingencies, leading to incomplete contracts, while opportunism involves "self-interest seeking with guile", such as exploiting contract gaps for profiteering or to cover risk of offering very lower r quote just to fill the order books . The term "bounded rationality" refers to the reality that "decision makers have limits on their rationality and constraints on their cognitive capabilities”.(Rindfleisch, A., & Heide, J. B. (1997)."

1.3.1 Agency Theory

Jensen and Meckling (1976) developed agency theory to explain conflicts arising from the separation of ownership and control. In construction contracts the principal/client/owner delegate tasks to the contractor who becomes agent for the principal. Risk arises when contractors interests diverse from the principles in terms of speed of execution, Profit and working capital burden, . This becomes acute under information asymmetry viz hidden costs , site conditions, quality compromises and changes in design & scope of work . Agency theory supports Abrahamson’s’ maxim on risk. Contractors who take excessive risks by under-pricing , then claiming variations very common in the industry. Clients may also select contractors with lowest bids, finding later the work abandoned or claims for non-contractual escalations in cost both material and labour. Moral hazard arises when the contractor’s behaviour changes due to varying site conditions and costs which contractor feels the excessive powers with the client for rates reworking , design changes , additional scope and his bargaining power constrained ,

1.3.2 Game theory

Dispute behaviour can be analysed as a strategic interaction in which parties seek to maximise their respective payoffs (Von Neumann & Morgenstern, 1944).Bidding for construction contract is an Adverse selection / or winners curse as per Games Theory. Having worked in procurement of construction contract services in a large organisation the researcher find the theory interesting as the factual observations or empirical experience at site move towards the concepts propounded in the game theory .Contracting is essential cooperative game and knowledge sharing. It is argued that dispute arises when parties face prisoners Dilemma and Nash equilibrium. The bidding process is a classic non-cooperative game characterized by information asymmetry. Contractors possess hidden information regarding their true operational capacities, cost structures, and risk thresholds, which the Employer cannot completely verify. In The First-Price Sealed-Bid Auction Model Most public and private construction procurement relies on first-price sealed-bid auctions. The contractor's strategy is to choose a bid price that maximizes expected profit:

1.3.3 The Winner's Curse (Capen, Clapp, and Campbell Framework)

In high-uncertainty engineering projects (e.g., subsurface infrastructure), the variance in cost estimations is significant. Under the Nash equilibrium for common-value auctions, the bidder who most severely underestimates the true cost of the project is the most likely to win the tender. (Capen et al., 1971)

This mathematical phenomenon, the Winner's Curse, leads to an adverse selection problem: the winning contractor enters the contract with a suboptimal or negative profit margin, structurally incentivizing aggressive "claims engineering" during the project execution phase to recover financial viability.

1.3.4 The Execution Phase: Principal-Agent Dynamics and Moral Hazard

Once the contract is executed, the interaction shifts to a Principal-Agent game. The Employer (Principal) seeks to maximize project quality and minimize cost, while the Contractor (Agent) seeks to maximize profit margin, potentially by reducing unobservable effort or quality.

1.3.5 Risk allocation Theory

A fundamental principle "Risk should be allocated to the party best able to control, manage or insure them was introduced by Max Abrahamson in his book Engineering Law and the ICE contracts(Abrahamson,1979). In Keating construction Law((Furst & Ramsey, 2006) which is one of the leading text on construction law the editor's note" The allocation of risk in construction contracts in not arbitrary; it is guided by the principle that Risk should be allocated to the party best able to control, manage or insure them" Uff(2013) emphasis that construction projects involve "inherent technical complexity and un avoidable risks which make absolute contractual foresight impossible Poor risk allocation is one of the root causes leading to disputes ,Delay and cost overruns.

1.4 Literature review- Empirical evidence from India and overseas jurisdictions

1.4.1 Claims and Disputes

. Yates (1988) the disagreement stems from the contract and includes (a) changes, (2) ambiguity in the contract agreements, (c) bad weather, (4) late design information and drawings, (5) delayed site possession, and (d) delays by other clients' contractors. A disagreement between the parties to a contract that may turn into a dispute if it can't be resolved by any of dispute Avoidance and resolution methods before one of the parties files a request for dispute resolution. Diekmann, J.E and Girard M.J (1995) described a dispute as "Any contract question or controversy that must be settled beyond the jobsite management staff" ." Construction Industry Institute (CII) defines a dispute "problem or disagreement between the parties that cannot be resolved by on-site project managers"(Diekmann et al,1994) According to the Halki test, a disagreement arises following the submission and rejection of a claim.(*Halki Shipping Corp. v. Sopex Oils Ltd.*, 1998), However, any research on conflict Avoidance and resolution and resolution must include claims arising from breaches and alleged breaches of the contractual terms.

1.4.2 Causes of Disputes

A pioneer in construction dispute research who used a subject matter approach, (Kumaraswamy M. 1997) examined instances He has examined Hong Kong building contract conflicts and classified the reasons into two categories: root causes and proximate causes.(Construction council 2020)

Figure 0-1 Classification of claims as proximate and root causes

Construction claims are said to arise from root causes. Immediate and obvious causes are known as proximate causes. Along with other factors including adversarial culture, inappropriate contract type, lack of knowledge or client indecision, and unrealistic cost, quality, and time expectations, he has highlighted "Risk allocation lacking clarity and fairness delivered on time postpones the associated benefits to be derived from the project by the society(Kumaraswamy 1997)

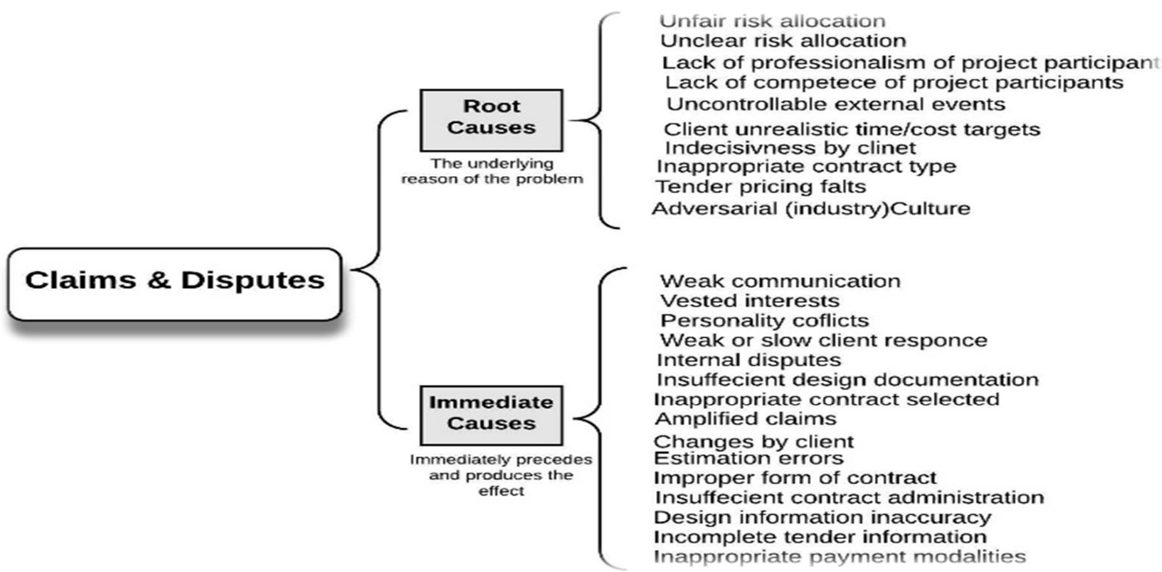

Figure 0-2 Root causes & Immediate cases (Kumaraswamy 1997)

1.4.3 Causes of claims and dispute in India

Below is a summary of a few studies that listed factors contributing of claims and Dispute Various academic research findings and empirical findings by professional organisations has about Indian dispute scenario . Chaphalkar and Iyer (2014)investigated the variables affecting arbitral rulings on claims for delays. The following factors were cited in the article: (1) late site handling; (2) late drawing issuance; (3)

late modification order; (4) late payment of the running account bull (RA), mobilization advance, or escalation; and (5) late payment of a subcontractor, vendor, or other client-appointed agency.

The major reasons for claims and disputes that were found in India, are mentioned as under:

Change in scope, Contract interpretations ,Contract management and administration failure, Design information was discussed late Poor management of sub-contractors, supplier or another interface ,Physical conditions were unseen to the site/ workplace was restricted ,Cash flow and payment issue, Workmanship deficiencies Tender errors and in accurate estimates ,Inadequate responses to information and requests , Late approval of subcontract , There were eight important elements found: Hemant Factors adversely affecting the cost performances of projects as: conflict among project participants; ignorance and lack of knowledge; presence of poor project specific attributes and non-existence of cooperation; hostile socioeconomic and climatic condition; reluctance in making timely decisions; aggressive competition at tender stage; and short bid preparation time

1.4.4 Recurring themes in Indian studies and Overseas jurisdictions

It can be observed that dispute sources cluster around five recurring themes: 1. Contractual and Documentation Factors 2. Project management and Performance factor 3. Financial and payment factors 4. Human and behavioral factor 5. External and Uncertainty factors

Recurring Theme	*International Evidence*	*Indian Evidence*
Contractual and Documentation Factors	*Ambiguous contracts, design errors, contract provisions, scope changes, variations (Bristow & Vasilopoulos, 1995; Hewitt, 1991; Yiu & Cheung, 2006)*	*Contract documentation deficiencies, record-keeping problems, contractual interpretation issues, delay-claim substantiation difficulties (Chaphalkar & Iyer, 2014)*
Project Management and Performance Factors	*Delays, disruption, acceleration, non-performance, restricted access (Conlin et al., 1996; Heath et al., 1994; Hewitt, 1991)*	*Variations to scope ,Contract interpretation Extension of time (EOT claims ,Site conditions Late, incomplete or substandard information, Obtaining approvals Site access Quality of design Unavailability of resources Poor planning, scheduling deficiencies, weak monitoring and project-control systems,*

		implementation delays (Doloi et al., 2012; KPMG & PMI, 2012; PMI South Asia & KPMG, 2019)
Financial and Payment Factors	*Payment disputes, budget disagreements, cash-flow pressures, non-payment (Conlin et al., 1996; Kumaraswamy, 1997; Yiu & Cheung, 2006)*	*Cost overruns, financial management weaknesses, resource constraints, project financing pressures (Iyer & Jha, 2005; KPMG & PMI, 2012)*
Human and Behavioral Factors	*Unrealistic expectations, poor communication, personality conflicts, lack of trust, weak inter-party relationships (Bristow & Vasilopoulos, 1995; Cheung & Yiu, 2004)*	*Communication deficiencies, stakeholder coordination failures, information asymmetries affecting claim evaluation (Chaphalkar & Iyer, 2014; Doloi et al., 2012)*
Governance and Administrative Factors	*Administrative failures, poor coordination, ineffective project management (Conlin et al., 1996; Diekmann & Girard, 1995)*	*Approval delays, bureaucratic processes, governance weaknesses, decision-making delays (KPMG & PMI, 2012; PMI South Asia & KPMG, 2019)*

Payment delays are one of the major reasons choking liquidity and causing project delay , cracks in commercial relationship .

1.5 Towards HGCR Act -Unequal / Asymmetrical bargaining power - Friedrich Kessler and Lord Dennings

The dictum that "cash flow is the lifeblood of the construction industry" is most famously attributed to Lord Justice Denning (as he then was) in the Court of Appeal case of *Modern Engineering (Bristol) Ltd v Gilbert-Ash (Northern) Ltd* (1973). In the Court of Appeal, Denning LJ sought to protect sub-contractors from the practice of main contractors withholding payment due to unrelated disputes or minor defects. He stated:" In the building trade, cash flow is the lifeblood of the enterprise. It is essential for the contractor to receive payment for the work he has done as soon as it is done, so that he can pay his wages and his suppliers. "The House of Lords, in *Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd* (1974) disagreed with Denning's interpretation of the specific contract terms. Lord Diplock emphasized that there is no common law rule preventing a party from contracting out of the right to immediate payment or providing for a right of set-off. Denning prioritized the commercial liquidity of the industry as a policy objective, whereas the House of Lords prioritized freedom of contract and the precise construction of the written agreement.

The standard forms of contract has been subject of discussions historically for the asymmetrical bargaining power of contract of the consumers or bidders of tenders . Friedrich Kessler (1943) brought the concept of Adhesion contract where the unconscionable terms are given for acceptance without any opportunity or power to bargain i.e. take it or leave it boiler contracts. He mentioned on "Illusory freedom of contract" and "structural inequality " in contract documents.

Lord Dennings In *Lloyds Bank Ltd. v. Bundy* (1975) explicitly suggested that bargaining power disparities formed the common denominator among equitable and legal defences to contract:

"Gathering all categories of cases in which courts set aside transactions-duress of goods, unconscionable transactions, undue influence, undue pressure, and unfair salvage agreements] together, I would suggest that through all these instances there runs a single thread. They rest on "inequality of bargaining power." By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other"

A detailed study of Lord denning's doctrine of Inequality in Bargaining power is enunciated in the article "The Unequal Bargain Doctrine: Lord Denning in Lloyds Bank v. Bundy" (Slayton, 1976)

The doctrine of " Inequality if bargaining power" was so obvious in construction Industry that the contractors made bids on lower profit margin and later has the opportunistic behaviour to set off losses or improve margin through claims and raising disputes.

This has led to crisis in the construction sector and led the government and industry in UK to enquire the inequalities and suggest remedies . Sir Michael Latham's path breaking studies which ultimately led to the HGCRA in 1996

1.5.1 Latham's "Trust and money" and "The Latham report , Constructing team".

Sir Miachel Lathms's path breaking the reports have led to the Security of Payment and Adjudication regime in the UK for construction contract disputes:

- 1993: Latham, Trust & Money
- 1994: The Latham Report, Constructing the Team

Latham (1993, 1994)study preceded economic slowdown and lack of growth in the construction sector. In 1993 construction output was 39 % below its peak in 1990. It says, "*It is not easy to create teamwork in construction when everyone is struggling to avoid losses*." The interim report by Sir Michael Latham focused on the relationship between "Trust and Money." Latham was concerned with the main contractor and the subcontractor. He wanted contract-writing bodies to have an agreed subcontract term.

1.6 The "Construction Act" Housing Grants, Construction and Regeneration Act 1996

UK introduced (HGCRA in 1996 ,1996) and this was followed by Australia state of North south Wales and (later by all states) and Singapore . The asymmetrical bargaining power between clients, contractors and sub-contractors caused distress in the industry, Legislative intervention in the contracts was a wildly contested debate in legal fraternity , Proponents of the freedom of contract objected this intervention an attack on laissez-faire . However, the industry found that it cannot self-regulate the transactions .

Despite the judicial reversal of the specific ruling, Denning's "lifeblood" philosophy directly influenced the Housing Grants, Construction and Regeneration Act 1996 (the "Construction Act") in the United Kingdom. These legislations codified the principle by:

a) Establishing a statutory right to interim payments.

b) "Pay and Argue later" -Interim finality on progress bill amount and no counter claims allowed

c) Prohibiting "pay when paid" and "Pay when paid "clauses

d) Introducing a rapid dispute resolution mechanism known as Adjudication.- 28 days

e) Right to suspend work

f) Summary enforcement by court

The influence of this principle i.e." Liquidity as lifeblood" extends to common law jurisdictions which have adopted similar "Security of Payment" (SOP) regimes. Australia , Singapore are taken for comparison in the article. Jurisdictions that enacted security of payment and Adjudication Acts are given below:

UK	Housing Grants and Construction regeneration Act, 1996 Local Democracy and Economic Development and Construction Act, 2009	Private adjudicator nominating bodies , Technology and construction courts to hear appeals. 28 days adjudicator award with interim finality and pay now and argue later model All disputes can be referred to Adjudication any time.
Australia	Building and Construction Industry security of Payment Act, **All 6 states and two territories have separate Security of payment acts Building and Construction Industry Security of Payment Act 1999 (NSW). Building and Construction Industry Security of Payment Act 2002 (Victoria).* Building and Construction Industry Security of Payment Act 2009 (South Australia). Building Industry Fairness (Security of Payment) Act 2017 (Queensland). Building and Construction Industry (Security of Payment) Act 2021 (Western Australia	, Right to suspend work , with interim finality and pay now and argue later model. Private adjudicator nominating body in NSW and Western Australia. Queen land moving towards from private nominating bodies to Government controlled Adjudicator nominating body . Adjudicator ward can be enforced as decree , Only payment dispute can be referred to adjudication . Payment schedules are mandatory.
Singapore	The Building and Construction Industry Security of Payment Act (SOPA), 2004	with interim finality and Pay now and Argue later model . technology and construction court . Single Adjudicator nominating Body. Summary enforcement by court . Only payment dispute can be referred to adjudication

The first case came for adjudication enforcement before TCC UK was In *Macob Civil Engineering Ltd v Morrison Construction Ltd* (1999) Hon. judge Dyson J mentioned that "*Parliament has intended some rough justice*" and a process "*in which mistakes and errors are bound to happen*." and explicitly cited Lord Dennings principle in *Macob Civil Engineering Ltd v Morrison Construction Ltd* [1999] to justify enforceability of adjudication

Most importantly in UK an adjudication enforcement procedure was also came into existence vide Ministry of Justice,(2024) (Civil Procedure CPR 7) or CPR 8 and CPR 24 ((summary judgment). :Later the Courts and Tribunals Judiciary (2022) provides guidance in the TCC guide *Part 24* (Pages 39 to 40)) .Commonly, the claimant's application will seek an abridgment of time for the various procedural steps and summary judgment under CPR Part 24(*Part 24 – Summary Judgment*, n.d.).

The court in Singapore Court of Appeal in *W Hing Construction Pte Ltd v Peh Kay Koon* [2011] echoed the "lifeblood" sentiment to protect sub-contractors . In Australia too courts endorsed Pay now and argue later principle "(NSW) and have endorsed Lord Dennings " cash flow Life blood for construction Industry".

1.7 Whether India shall transplant security of payment and adjudication act ?

India's dispute resolution pillars are Arbitration , and litigation . The DRBs failed in India and other modes of dispute resolution are yet to get wider acceptance like Neutral Engineer and med Arb and mediation .

Arbitration in India faces three distinct crisis(i) pending Arbitration cases in Judiciary (II) Government contracts documents are now without arbitration clauses (iii). Finality of award under stress after supreme courts verdict Gayathri *Balasamy v. ISG Novasoft Technologies Ltd.* (2025), the Supreme Court recognised a limited power to modify arbitral awards.

As early as in 1989 The Supreme Court in *F.C.I.* v. *Joginderpal Mohinderpal* (1989), at para 7, observed, -

"*We should make the law of arbitration simple, less technical, and more responsive to the actual realities of the* situation*, but we must be responsive to the canons of justice and fair play and make the arbitrator adhere to such processes and norms that will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have been done*." The anguish of the Supreme Court is evident from the observations of D.A. Desai J. in *Guru Nanak Foundation* v. *Rattan Singh* (1981):

"*Interminable, time-*consuming*, complex, and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective, and speedy for resolution of disputes, avoiding procedural claptrap, and this led them to the Arbitration Act, 1940 ("Act" for short). However, the way in which the* *proceedings under the Act are conducted and, without exception, challenged in courts has made lawyers laugh and legal philosophers weep*."

1.7.1 Arbitraton cases pending in Indian courts

According to Dixit and Tripathi (2026) more than 75000 Arbitration case are pending in Indian courts. Out of 75000 cases 11239 are in High court and takes average time of 18.69 months , District courts have 63012 cases pending and takes average time line of 30.56 months. Section 34 cases i.e. challenge of Arbitraton cases are 50 % of the cases pending in High court while 29.95. Section 9 cases of interim measures have 17.15 % pendency in high court and 29.95 cases in district courts . Even section 11 appointment of arbitrators cases are pending in high court 34.7 % and in District courts 40.40 %.

1.7.2 Arbitration clauses removed from Govt of India , Public sector undertakings and state governments above 10 cr.

The Government of India, Ministry of Finance, Department of Expenditure (2024)has issued guidelines for arbitration and mediation in contracts of domestic public procurement and restricted arbitration clauses only to contracts below 10 crore and advised all state governments and departments to follow the same. It has recommended forming a high-level mediation committee under Section 28 of the Mediation Act 2023 for mediation or negotiated settlement. The reasons for moving away from arbitration are given in paragraph 5, which is reproduced below, which gives the state of arbitration as of today and provides a true assessment of arbitration in India -

"*The process of arbitration itself takes a long time and is not as quick as envisaged, besides being very expensive too. The reduced formality, combined with the binding nature of decisions, has often led to wrong decisions on facts and improper application of the law. The arbitral process, being contractual and intended to be final with very limited further recourse, is also exposed, particularly in matters of high financial value, to perceptions of wrongdoing, including collusion. It is noteworthy that arbitrators are not necessarily subject to the high standards of selection that are applied to the judiciary and to judicial conduct. Further, proceedings are conducted behind closed doors and not in open court. There have been judicial decisions regarding impropriety on the part of arbitrators, and there is little accountability for such wrong decisions if taken by arbitrators.*

The benefit of finality has also not been achieved. A large majority of arbitration decisions are being challenged *in the courts both by the government (or its entity or agency) and by the opposite party when the decision of the arbitrators is not to the satisfaction of either party. The expectation that challenges to* *arbitration awards would be rare has not been realized in practice. Therefore, instead of reducing litigation, it has become virtually an additional layer and source of more litigation, delaying final resolution.*

The objective of *relieving the burden on courts has generally not been achieved*.

(iv) The intended finality, though often not realized in practice, also has a bearing on possible civil and criminal actions attendant to the subject matter of the disputes.

(v) In many cases, a commercial and sensible practical approach, if resorted to, may indeed amicably resolve the issues at the threshold, but the existence of an arbitration clause makes it easy for officers to avoid taking a decision by letting the dispute go to arbitration.

Thereafter, in the adversarial *process, realistic claims and counterclaims are*

often replaced by inflated claims, counterclaims, or crossclaims, and the arbitral process many a time ends in concluding resolutions that are in-between or extreme in nature, when the intrinsic actual claims are far smaller."

These development shows need to debate the necessity of a reliable forum like HGCRA Adjudication Mechanism in India which takes up issues within days of the issue coming into notice.

The Department-related Parliamentary Standing Committee on Transport, Tourism and Culture (2022) stated profiteering by Contractors in highway contracts.

Project	**Project Cost in Cr INR**	**Claim**	**%ge of claim of Project cost**
Ranchi-Rargaon-Jamshedpur	1696	8940	**527%**
Madurai-Tuticorin Highway widening	154	2133	**1385%**
Mulbagal-(Karnataka) AP Border	913	4287	**470%**
Madurai-Tuticorin	629	8199	**1303%**
Panipat-Jalandhar	5455	12906	**237%**
Bareilly-Sitapur	1046	7504	**717%**
Muzaffarnagar-Haridwar	1508	5475	**363%**
Total	**11401**	**49444**	**434%**

Can India look forward to the UK HGCRA model as refreshing mode for dispute resolution to address the liquidity issue and speedy resolution though it is an interim finality model where the finality of the issues will move toward again to Arbitration , Litigation or mediation.

1.7.3 Limitations of HGCR Act 1996 or other SOP and Adjudication acts

“Any” disputes in “any time” in only UK HGCR Act 1996. This is not suitable for Indian environment and wont help objective of dispute resolution in fixed time. The HGCR act is not addressing any final resolution but only interim finality t contractual mile stone payment for works carried outby contractor UK allows any dispute however many complex engineering disputes it is difficult to resolve in 28 days and require expertise adjudicator with vast experience . Retention money still remains outside the scope of HGCRA act. UK has brought proposed new legislation to ban retention money due to heavy adverse impact on economy , as it is causing Insolvency of contractors and sub-contractors . It can observe that HGCRA is continuing to evolve by widening scope of the legislation which is an example of Gunter Teubner’s theory of legal irritants and reflexive law.

1.7.4 Gunther Teubner's theory of reflexive law

Teubner challenges the adequacy of pure contractual autonomy in regulating complex economic and social relationships. Teubner argues that where market failures, power imbalances or systemic dysfunctions arise, the state may legitimately intervene not by dictating substantive outcomes but by establishing procedural frameworks that influence and guide private decision-making. Reflexive law (Teubner, G. (Ed.). (1987) therefore seeks to balance contractual autonomy with regulatory objectives by creating mechanisms through which parties regulate their own behaviour within a legislatively structured framework. Security of payment land Adjudication law like HGCR act exemplifies this approach . However in Australia this approach was modified and strict legislative schedule of payment was mandatory to be incorporated in the contracts which is (Ellis 2020) responsive reflexivity Teubner's theory of reflexive law provides a theoretical justification for Security of Payment legislation as a form of legislative intervention that tempers freedom of contract through procedural safeguards designed to address systemic payment failures while preserving a substantial degree of contractual autonomy.

1.7.5 Conclusion

Teubner’s insights on legal intervention and legal transplant give insights into the difficulties that India may face it tries to adopt a blind “cut and paste” legislation from UK’s HGCRA or from any of the jurisdictions. It gives a path forward the boundaries of such adoption and implementation so that the transplant will interact with India's typical socio economic and political and institutional environmental culture and self-evolve or getting trapped in the system.

. Teubner argues that any regulatory intervention that attempts social institutions will face a regulatory trilemma-viz it is either irrelevant, or it produces disintegrating effects or it produces disintegrating effects on regulatory law itself. Teubner proposes reflexive law as a resolution for legal trilemma. Reflexive law conceives self-regulation through installation , correction and redefinition of democratic self-regulatory mechanism .Third concept of Teubner's is Legal irritants (Teubner, G.1988 (Ed.). where he state that transplanted legal rules are not transplants that take root in the new environment and start growing according to their own logic -they are foreign bodies that stimulate a whole new series of unexpected and disintegrating developments in the host environment. UK HGCR Act "Argue now pay later" thorough evaluation in the context of tendency to "grab and fly away syndrome that may come up in India as registration of sub-contractors and contractors on national basis is not yet existing and having a history of vanishing companies who made millions in IPO and then vanished in one day, .In Indian context the Australia model of Security payment for retention money trust is more suitable than complete ban on the retention money . Retention money the complete ban would not help quality and compliance obligations.

India needs to adopt a cautious approach towards legal transplantation towards security of payment and adjudication Act and shall not directly copy any of the security of payments act without creating an efficient Technology and construction courts and quick decree enforcement process. Security of payment and adjudication Act provides for interim finality and for final resolution the dispute has to move to mediation /Arbitraton/ litigation . Here long delays in arbitration case alone are reported and pending numbers are too uncomfortable. The law makers shall think about a way to resolve this bottle neck which may make new act also sucked into the huge back log in the courts. Govt of India and many states have removed arbitration clauses from contracts above 10 crores and encourages mediation . This noble objective may be discouraging bidders in participating in bids.

References

Abrahamson, M. (1979). *Engineering law and the ICE contracts* (4th ed.). Applied Science Publishers.

Aritonang, D. D., & Simanjuntak, M. R. A. (2020). Analysis of important factors in choosing or using process alternative dispute resolution of construction project from contractor's perspective (Case study in XYZ Company Ltd.). *IOP Conference Series: Materials Science and Engineering, 1007*, 012084.

Atanasov, V. A., et al. (2022). Factual disagreements in construction delay disputes: Identification, evaluation and testing of the justifications for differences in opinion. *IOP Conference Series: Earth and Environmental Science, 1101*, 052001.

Chaphalkar, N. B., & Iyer, K. C. (2014). Factors influencing decisions on delay claims in construction contracts for Indian scenario. *Australasian Journal of Construction Economics and Building, 14*(1), 32–44. https://doi.org/10.5130/AJCEB.v14i1.3766

Capen, E. C., Clapp, R. V., & Campbell, W. M. (1971). Competitive bidding in high-risk situations. *Journal of Petroleum Technology, 23*(6), 641–653.

Bristow, D. I., & Vasilopoulos, R. (1995). The new CCDC 2: Facilitating dispute resolution of construction projects. *Construction Law Journal*.

Cheung, S. O. (Ed.). (2014). *Construction dispute research: Conceptualisation, avoidance and resolution*. Springer. https://doi.org/10.1007/978-3-319-04429-3

Cheung, S. O., & Yiu, K. T. W. (2004). Significant dispute sources of construction mediation.

Coase, R. H. (1937). The nature of the firm. *Economica, 4*(16), 386–405.

Conlin, J., Langford, D. A., & Kennedy, P. (1996). *The relationship between construction procurement strategies and construction contract disputes*. CIB Conference Paper

Construction Industry Council. (2015, August). *Reference materials for application of dispute resolution in construction contracts*.

https://www.cic.hk/files/page/51/Reference%20Materials%20Dispute%20Resolution%20%28August%202015%29_e.pdf

Courts and Tribunals Judiciary. (2022, October 12). *Technology and Construction Court (TCC) guide*. https://www.judiciary.uk/guidance-and-resources/technology-and-construction-court-tcc-guide-october-2022/

Department of Expenditure, Ministry of Finance, Government of India. (2024, June 3). *Guidelines for arbitration and mediation in contracts of domestic public procurement* (Office Memorandum No. F.1/1/2024-PPD). Department of Expenditure. Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement

Department-related Parliamentary Standing Committee on Transport, Tourism and Culture. (2022). *Issues relating to road sector* (Report No. 325). Parliament of India. Parliament Report No. 325

Dixit, N., & Tripathi, M. (2026, January 21). *India's arbitration system faces overwhelming backlog with 75,000+ cases pending*. ET Legal World. ET Legal World article

Diekmann, J. E., & Girard, M. J. (1995). Are contract disputes predictable? *Journal of Construction Engineering and Management, 121*(4), 355–363.

Diekmann, J. E., Girard, M. J., & Abdul-Hadi. (1994). *DPI—Dispute potential index: A study into the predictability of contract disputes*. University of Colorado.

Doloi, H., Sawhney, A., Iyer, K. C., & Rentala, S. (2012). Analysing factors affecting delays in Indian construction projects. *International Journal of Project Management, 30*(4), 479–489. https://doi.org/10.1016/j.ijproman.2011.10.004

Charlotte Ellis, 'Regulating Commercial Contracts: What Can We Learn from Part II of the Housing Grants, Construction and Regeneration Act 1996?' in TT Arvind and Jenny Steele (eds), *Contract law and the legislature: autonomy, expectations, and the making of legal doctrine* (Hart 2020) 329–361.

Kessler, F. (1943). Contracts of adhesion—Some thoughts about freedom of contract. *Columbia Law Review, 43*(5), 629–642. https://doi.org/10.2307/1117230

Furst, S., & Ramsey, V. (Eds.). (2006). *Keating on construction contracts* (8th ed.). Sweet & Maxwell.

Heath, B., Hills, B., & Berry, M. (1994). *The nature and origin of conflict within the construction process*. CIB Report.

Hewitt, R. (1991). *Winning contract disputes: Strategic planning for major litigation*. Ernst & Young.

Iyer, K. C., & Jha, K. N. (2005). Factors affecting cost performance: Evidence from Indian construction projects. *International Journal of Project Management, 23*(4), 283–295. https://doi.org/10.1016/j.ijproman.2004.10.003

Jagannathan, M., & Delhi, V. S. K. (2022). Identifying focus areas to decode the decision to litigate contractual disputes in construction. *Engineering, Construction and Architectural Management, 29*(8), 2976–2994.

Jagannathan, M., & Delhi, V. S. K. (2023). Decoding a construction organisation's tendency to litigate: An understanding through financial statements. *Built Environment Project and Asset Management, 13*(3), 453–470. https://doi.org/10.1108/BEPAM-07-2022-0139

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behaviour, agency costs and ownership structure. *Journal of Financial Economics, 3*(4), 305–360.

Kalyan, B. H. S., et al. (2022). Discerning recurrent factors in construction disputes through judicial case studies—An Indian perspective. *Buildings, 12*(12), 2229.

Kathpalia, A. (2021, May). *Legislative solutions to delays in payments in Indian construction industry*. *Indian Infrastructure*.

https://www.researchgate.net/publication/351614304_Legislative_Solutions_to_delays_in_payments_in_Indian_Construction_Industry

Kessler, F. (1943). Contracts of adhesion—Some thoughts about freedom of contract. *Columbia Law Review, 43*(5), 629–642. https://doi.org/10.2307/1117231

Koc, K., & Gurgun, A. P. (2022). Ambiguity factors in construction contracts entailing conflicts. *Engineering, Construction and Architectural Management, 29*(5), 1946–1965.

Kumaraswamy, M. M. (1997). Conflicts, claims and disputes in construction. *Engineering, Construction and Architectural Management, 4*(2), 95–111.

KPMG, & Project Management Institute. (2012). *Study of project schedule and cost overruns: A report on infrastructure and mega projects*. Government of India.

Li, K., & Cheung, S. O. (2022). Are we ready for a rational discussion? The existence of biases in construction dispute negotiation. *IOP Conference Series: Materials Science and Engineering, 1218*, 012022.

Latham, M. (1993). *Trust and money*. HMSO.

Latham, M. (1994). *Constructing the team: Final report of the government/industry review of procurement and contractual arrangements in the UK construction industry*. HMSO.

Ministry of Justice. (n.d.). *Part 7 – How to start proceedings: The claim form (Civil Procedure Rules)*. https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07

Ministry of Justice. (n.d.). *Part 8 – Alternative procedure for claims (Civil Procedure Rules)*. https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08

Ministry of Justice. (n.d.). *Part 24 – Summary judgment (Civil Procedure Rules)*. https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part24

Nash, J. F. (1950). Equilibrium points in n-person games. *Proceedings of the National Academy of Sciences, 36*(1), 48–49.

Nash, J. F. (1951). Non-cooperative games. *Annals of Mathematics, 54*(2), 286–295.

Project Management Institute South Asia, & KPMG. (2019). *Project management: Driving growth and development in India*. Project Management Institute South Asia and KPMG.

Rindfleisch, A., & Heide, J. B. (1997). Transaction cost analysis: Past, present, and future applications. *Journal of Marketing, 61*(4), 30–54.

Sabri, O. K., & Torp, O. (2022). Corrective and preventive action plan (CAPA) for disputes in construction projects: A Norwegian perspective. *Infrastructures, 7*(5), 63.

Slayton, P. (1976). The unequal bargain doctrine: Lord Denning in *Lloyds Bank v. Bundy*. *McGill Law Journal, 22*(1), 94–126.

Teubner, G. (Ed.). (1987). *Autopoietic law: A new approach to law and society*. Walter de Gruyter.

Teubner, G. (1998). Legal irritants: Good faith in British law or how unifying law ends up in new divergences. *The Modern Law Review, 61*(1), 11–32. https://doi.org/10.1111/1468-2230.00125

Uff, J. (2013). *Construction law* (11th ed.). Sweet & Maxwell.

Von Neumann, J., & Morgenstern, O. (1944). *Theory of games and economic behaviour*. Princeton University Press.

Williamson, O. E. (1985). *The economic institutions of capitalism: Firms, markets, relational contracting*. Free Press.

Yates, D. J. (1998). *Conflict and disputes in the development process: A transaction cost economics perspective*. Working paper, Department of Real Estate and Construction, University of Hong Kong.

Yiu, K. T. W., & Cheung, S. O. (2006). A catastrophe model of construction conflict behaviour. *Building and Environment, 41*(4), 438–447.

Table of Cases

Lloyds Bank Ltd v Bundy [1975] QB 326 (CA).

Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd [1974] AC 689 (HL).

Halki Shipping Corp v Sopex Oils Ltd [1998] 1 WLR 726 (CA).

Macob Civil Engineering Ltd v Morrison Construction Ltd [1999] EWHC Technology 254.

Modern Engineering (Bristol) Ltd v Gilbert-Ash (Northern) Ltd [1973] 71 LGR 162 (CA).

Food Corporation of India v. Joginderpal Mohinderpal, (1989) 2 SCC 347 (India).

Guru Nanak Foundation v. Rattan Singh & Sons, (1981) 4 SCC 634 (India).

Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC On-line SC 986 (Supreme Court of India).

W Hing Construction Pte Ltd v. Peh Kay Koon [2011] SGHC (Singapore High Court).

1 Legislation

Arbitration and conciliation act 1996 (India)

Housing Grants, Construction and Regeneration Act 1996 (UK).

Building and Construction Industry Security of Payment Act 1999 (NSW).

Building and Construction Industry Security of Payment Act 2002 (Victoria).

Building and Construction Industry Security of Payment Act 2004 (Singapore).

Building and Construction Industry Security of Payment Act 2009 (South Australia).

Building Industry Fairness (Security of Payment) Act 2017 (Queensland).

Building and Construction Industry (Security of Payment) Act 2021 (Western Australia).

Local Democracy and Economic Development and Construction Act, 2009

Mediation act 2023(India)