

Negotiation as an Alternative Approach to Resolve Disputes out of Court: A Case Study of Negotiations in BRT, Project Peshawar

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Abstract

In construction projects, disputes are common and the project heads and leaders need to resolve them for the timely resolution of conflicts. The formal process of litigation and court proceedings require effort, time, and money and often the relationships are also compromised. Alternatively, the significance of alternative dispute resolution in such projects is beneficial as it is cost effective, maintains confidentiality, preserves relationships, and saves time and resources. There are many out of court approaches to dispute resolution. Arbitration, mediation, and negotiations are the approaches that build mutual consensus and resolve the dispute by reaching a compromise. Of these alternative dispute resolution approaches, negotiation is the most favorable, as it saves time and resources. The findings from this study reveal that in Bus Rapid Transit (BRT) Project, Peshawar, efforts were made to reach agreeable solutions out of court and many stakeholders were compensated with negotiation and mutual consensus. It saved resources, costs, time, and relations among the stakeholders.

Keywords: Negotiation, Alternative Dispute Resolutions, Bus Rapid Transit (BRT) Project, Peshawar

Introduction

Negotiation means resolving disputes, conflicts, and problems with mutual consciences among stakeholders and disputing parties. Particularly in construction projects, disputes are common and the project heads and leaders need to resolve them for the timely resolution of conflicts. The formal process of litigation and court proceedings require effort, time, and money and often the relationships are also compromised. Alternatively, the significance of alternative dispute resolution in such projects is beneficial as it is cost effective, maintains confidentiality, preserves relationships, and saves time and resources.

There are many out of court approaches to dispute resolution. Arbitration, mediation, and negotiations are the approaches that build mutual consensus

and resolve the dispute by reaching a compromise. Of these alternative dispute resolution approaches, negotiation is the most favorable, as it saves time and resources. The findings from this study reveal that in Bus Rapid Transit (BRT) Project, Peshawar, efforts were made to reach agreeable solutions out of court and affected persons were compensated with mutual consensus among the stakeholders. It saved resources, costs, time, and relations among the stakeholders

The techniques of alternative dispute resolutions like negotiation, arbitration and mediation are preferable because they are less costly and less time consuming as compared to litigation. On the other hand, as disputes are part of an organization's routine and they can occur repeatedly, therefore, one should learn from the already settled disputes.

When disputes are to be resolved, both parties having the disputes should voluntarily enter the negotiation, as the opposite party could not be dragged into negotiation or mediation. It is a voluntary process where the willingness of both sides is required. Companies and business entities may craft a formal conflict resolution mechanism; to keep the disputes under control and timely resolve them, as unresolved conflicts intensify with time. It is advised that the workers should support and follow their frontline managers as in this way, the chances of conflict resolution are greater.

Literature Review

Litigation is the formal, most costly, and public prosecution of a case, where a judge and a jury make a decision binding by all the parties or stakeholders involved. Usually, the court provides a chance for arbitration or mediation before taking into the litigation. If successful, the case is withdrawn, and a settlement is made. If the parties cannot compromise and fail to reach a decision or a settlement, then the Court of law is the only way to resolve the issue. Lawyers are hired by the disputing parties, and the decision made by the court is binding on all parties.

Pablo (2024) stated that alternative dispute resolution approaches save resources and time. The expertise and skills of arbitrators and mediators help in resolving the disputes out of court. On the other hand, Mota et al., (2023) argues that alternative approaches to disputes are effective than the traditional approaches like legal frameworks and court cases. These approaches are adopted because of flexibility, not hurting mutual relationships and cost effectiveness.

Gamage & Kumar (2024) also stated that in construction projects, disputes are common and the project heads and leaders need to resolve them for the timely resolution of disputes. The significance of alternative dispute resolution in such projects is beneficial as it is cost effective, maintains confidentiality, preserves relationships, and saves time and resources. Similarly, Sherman & Momani (2025), also argues that mediation can be considered as an alternative approach to resolving disputes.

Alhasan (2025) stressed the importance of ADRs outcomes in international commercial transactions. Illankoon et al., (2022) stated that the role of construction industry is vital for the growth of economy of any country.

Moreover, due to the involvement of many stakeholders, it is imminent that conflicts will arise in such projects, which leads to the incorporation of alternative dispute resolution methods for resolving those conflicts.

Johnson and Keddy (2010) explain that the most effective method to resolve disputes at the workplace is through alternative dispute resolution techniques. These techniques are most preferable because they are less costly and less time consuming as compared to litigation. On the other hand, as disputes are part of an organization's routine and they can occur repeatedly, therefore, one should learn from the already settled disputes.

Alternatively, arbitration is another approach to problem-solving outside the court. The process is just like a court proceeding but is more flexible, private, and cost-effective. The arbitrator is appointed with the mutual consent of all the parties. The decision or the conclusion taken by the arbitrator may be binding or non-binding, depending on the pre-agreed conditions. It should be decided in advance, according to the nature of the problem at hand. If the decision is non-binding, the parties may arrange for a trial to a court of law. Both these are costly and, to an extent, rigid methods to resolve conflicts.

Weiss (2020) stated that there is literature on negotiation, conflict management, and dispute resolution, but it is a practical skill and without examples from real life, it is difficult to explain the process with hypothetical theories. Therefore, this study provides real examples from a large project, where many disputes were resolved with the help of negotiations and alternative dispute resolution approaches. Raiffa (2007), stated that those with preparations and homework negotiate well when they find themselves in a conflict, dispute, or a business deal. Bamford, Drutowski, Fernandes, Litewka, and Pyle (2022), stated that many partnerships and joint ventures are formed as the entities could not claim the value separately, what they could get by forming a partnership or a venture. Although they create a collective value but sometimes problems, disputes and mismanagement cause disputes resulting in loss and court cases. There is a mechanism in the contract the partners have signed, but sometimes, the contract does not favor the context and situation at hand.

Moreover, Cheng and Shi (2019) state that with the development in the present era, the businesses have flourished, and the growth has resulted in economic activities like import and export etc. With this, business negotiations are also increased. Although the researchers in the field of business negotiations have worked a lot and they have made a lot of contributions in the area, resulting in resolving business problems and conflicts. But it is also true that conflicts are still there and sometimes the negotiators fail to make a deal, which leads to court cases, delays, and incurring costs.

Doherty and Guyler (2008), state that a timely response to conflicts is necessary because it can disturb employees' performance and productivity. In the process of mediation, a third person facilitates communication between the conflicting sides so that they can understand each other in a better way

and can have an acceptable outcome. Mediation is a low-cost alternative to arbitration and less costly as compared to long court cases. It is a voluntary process where the parties involved want to have a mutually compromised outcome.

Methodology

The methodology employed in this study is qualitative, where a case study of BRT project Peshawar was selected for research and analysis. Being a large project many stakeholders engaged in the process that led to disputes and conflicts.

The data was collected using open-ended interviews with the stakeholders. The reason behind using open-ended interviews for data collection was that it gives deep and detailed information and the essence of the study. A total of 30 open-ended interviews were conducted among the stakeholders, including the project managers and workers, consultants, affected persons, and government representatives. The data was then analyzed manually using paper and pencil by line, open, axial, and selective coding. For ethical requirements of the research, a consent form was signed from all the interviewees and their names and details were kept confidential.

Findings

Disputes arise in every field of life and people must resolve conflicts and disputes to move forward. Unresolved disputes could disrupt daily life activities, hurt relations, and could lead to court cases, and even clashes and physical fights. In such cases, the situation could deteriorate, and the dispute resolution could take a lot of time and resources. On the other hand, if the disputes are resolved with mutual consensus, it not only increases the profit, flourish businesses but also helps in growing relationships.

As per the data from the participants in the study, the flexibility in resolving disputes helps in reaching some agreement. Some of the problems were still not resolved at the table and had been taken to court, waiting for the orders and judgments. As the respondent said:

Some of the issues are still not resolved and the issues have been taken to the Court, and the court has granted a stay order on them, due to which some of the issues are left unresolved (IR01).

As another example of unresolved disputes, a counterpart, with all efforts from the other side to reach a compromise, refused to negotiate and took the matter to court. As per respondent, when the parties fail to resolve their differences through negotiations, and let the court decide the matter, in such instances it is a very lengthy process, which slows down the completion of the project, within the time. The same happened in a failed negotiation.

Our teams had many meetings with them, and they tried to convince them, but they all failed. Then nothing worked, they (the party) moved to court and took a stay order from the court. The work has stopped there, and the court decision is pending and awaited. It is in our opinion a failed negotiation (IR01).

The respondent also added that because of the complaints of some of the general public, the court of law intervened in the project, which also caused delays.

So that person, when we were unable to satisfy him, went to court. A prominent judge was the head of the court at that time. The honorable Judge was not satisfied with the project, and he ordered the FIA to probe into the project (IRO2).

Also, the reservations of the affected persons were resolved by the court order.

By court order, the station was moved a little from his home. Also, a barrier was made on the route so not to disturb the privacy of his home (IRO2).

A social resettlement plan expert was interviewed for her views regarding the conflict resolution process. She added that in some instances the government record was not up to date, due to which the affected people faced problems. For instance, the land record was not categorized properly in the land record documents, for which, some disputes arose which were finally resolved with negotiations. On other instances, some of the affected persons wanted that their land should also be treated as commercial land which was not as per documents. They also approached the court, but the court decided against them.

Yes, there were issues, like in Zia market, it was commercial land. In the Patwari record, the land was not declared as commercial land. After many negotiations and meetings and other concerned ADB were also involved, which was then sold as commercial land, and payments were made to them. Other land on the backside of the market was not commercial land, even the influential owners like politicians etc. approached the court for commercial rates to be given to us. But in the revenue record it was not commercial land, so nothing happened even by approaching the court (IRO7).

The respondent told the researcher that every day is a challenging day for us, as we must negotiate and resolve disputes and satisfy the customers by addressing their problems. The respondent talked about an incident of an elderly man, who unintentionally got emotionally hurt by one of their staff members, but the terms were negotiated with him, eventually.

In our guidelines and SOPs for the passengers, there is mentioned that fluids are not allowed on the buses. A passenger brought with him four bottles of some sort of fluid. He was not allowed to use the bus service. Then he came here and told us that he cried the whole night, and I will lodge a court case against you. He was still crying. He was a very senior citizen. We wanted to lessen his anger and cool him down so we told him that next time, we will compensate you. He said that the liquid is sealed, and it cannot fall on the bus. Disputes are very common here (IRO8).

Respondent “IR22” stated that efforts are made to settle the matter by the dispute board but if the settlement is not successful, the case is moved to arbitration. It is an informal process and here most of the problems are resolved. If some of the issues are still unresolved, the matter is taken further to the court of law.

So, after the amicable settlements, if the thing is not decided we have the choice of arbitration. Arbitration is an informal process as compared to litigation, i.e., going to court and there is a complete comprehensive mode for the arbitration, how the arbitration works, who are the arbitrators and how do we pay the fee. How the arbitration goes and suppose I have the questions for the Sarhad University Students, and the question was defined and explain arbitration and arbitration clause, mandatory arbitration, voluntary arbitration and explain in detail the commencement of arbitration and its procedure (IR22).

Respondent IR15, a junior engineer, shared his understanding of the importance of communication in negotiation. He gave an example of an affected person, who believed in written communications, as one can track back events if required. Thus, written communication in the form of agreements is helpful in resolving disputes.

He has gone to court and taken 3 to 4 stay orders in this matter. The project team is making a sideway near his residence, on which he has disputes. He does not believe in oral communication; he wants everything to be in written form (IR15).

Respondent IR15 said that one of the stakeholders has taken the dispute to court and now the matter will be decided there. He stated that people do not care about resources, and time although it could be reserved out of court.

“He has gone to court and taken 3 to 4 stay orders in this matter.” “We do not care about the time and resources.”

Respondent IR01 also expressed his views about the lengthy court proceedings and time it takes.

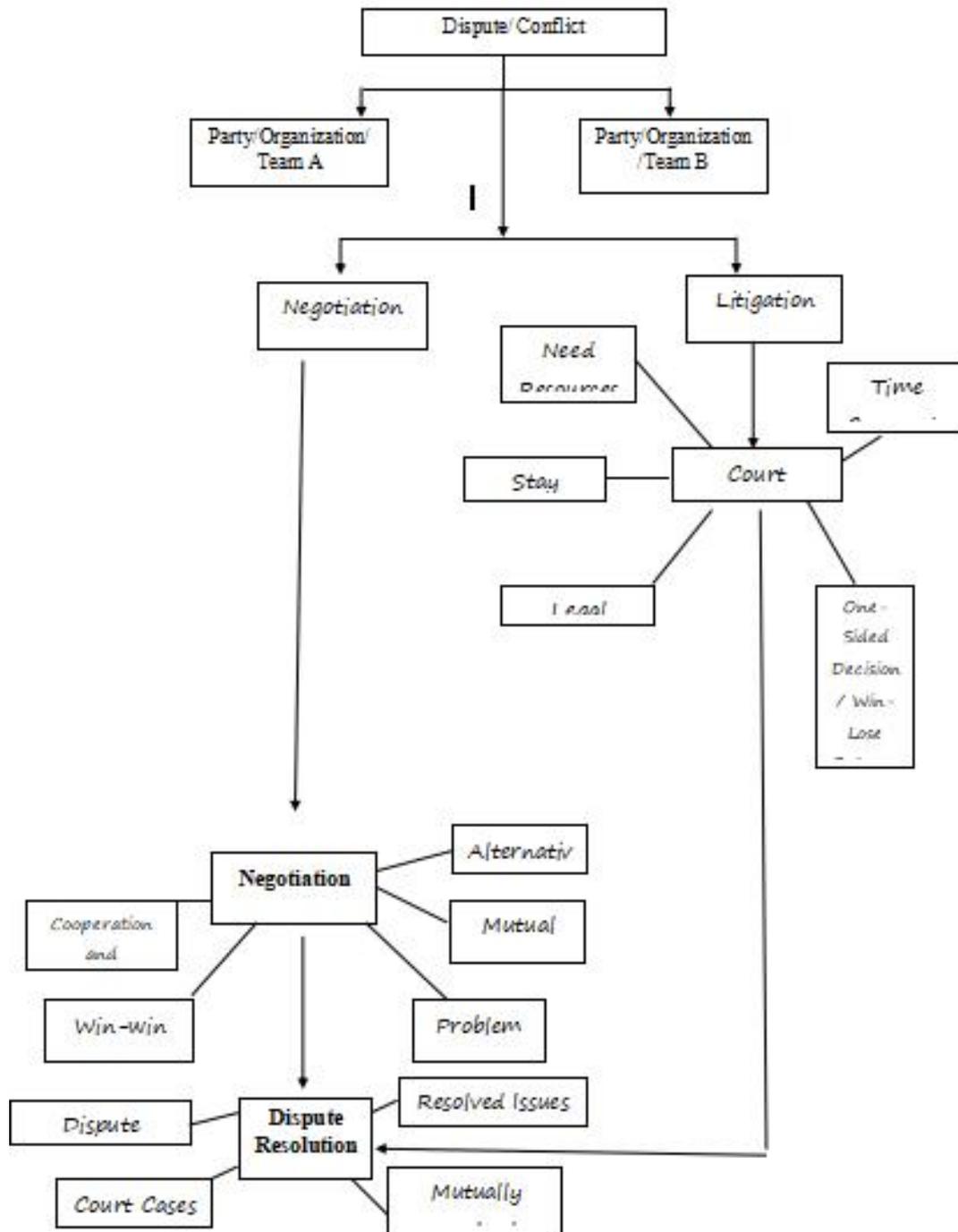
“I thought that if they take the matter to court, the work will be stopped and as we know that court decisions take a lot of time to execute.”

Further respondent, IR13 added that sometimes negotiations fail and people have to take the matter to court.

“The issue was not resolved on time; we have moved to court. Now the matter is in court, as with the negotiations, we were unable to solve the problem.

On a broader scale, these findings have implications for general public as everyone negotiates every day without noticing it. It is important to consider the nature of dispute at hand, or an extent, as some of the critical matters could not be resolved with negotiation and law enforcement and court of law can address them.

Figure 1.1 Negotiation as an alternative to Dispute Resolution Process



Discussion

There are many out of court approaches to dispute resolution. Arbitration, mediation, and negotiations are the approaches that build mutual consensus and resolve the dispute by reaching a compromise. Of these alternative

dispute resolution approaches, negotiation is the most favorable, as it saves time and resources. Thus, as per the findings it is suggested that most of the problems were resolved with the help of mutual consensus, negotiations and compromises and a few cases were moved to court and are still not resolved. Bamford, Drutowski, Fernandes, Litewka, and Pyle (2022), stated that partnerships help in creating values but sometimes disputes and mismanagement cause problems resulting in loss and court cases.

Lewicki and Hiam (2006) stated that conflict resolution is a complex process, involving many parties. In the BRT project, many stakeholders and parties were involved, and they had multiple disputes. Most of the disputes were resolved with consensus and negotiation, and mediation, while some of the disputes were taken to the court of law. The analysis of the data shows that disputes were addressed and resolved in a timely manner, with only a few cases of unresolved disputes that are in the court of law. The literature also confirms these findings as Gosselin (2007) stated that conflicts are unavoidable and inescapable and could be resolved with the help of negotiations because it is a skill for survival in tough situations. Additionally, he also stated that conflict could be resolved by many methods, like mediation, arbitration, and litigation, but they are time consuming and expensive, and often one sided.

The data from this study reveals that efforts were made to reach some agreeable solutions out of court and compensate the affected persons with consensus and compromise. As per Barnes (1998) the goal of negotiation is to reach a solution acceptable to all involved, and for these good communications skills are appreciated. As per literature, Carver, Allison, Fowler, Ertel, Keiser and Vondra (2000) state that the motive behind using ADR is that it saves time and money, whereas the litigation and court proceedings require effort, time, and money. Likewise, Lyons (2012) Working together towards a solution saves time and resources.

It is evident that during the BRT project, the main concern of the project team was to resolve the disputes with negotiation, to save resources and time. The reasons were that the project team wanted avoid court cases, as it causes delays. The data reveals that without negotiations, the project would have faced many major problems. When two counter parties or organizations face a dispute, they have many alternatives to resolve the issue. Either they can resolve the issue with the help of negotiation, or they can use the legal option of moving to the court to decide the matter at hand.

The findings suggest that litigation or moving to court could be a viable option, but it involves many risks. It is a lengthy, time-consuming process and requires many resources. Also, it is a legal process and what the court decides must be acceptable to all parties. The court may give stay orders, which puts the decision in pending, and delays the outcome. The court decisions may help in dispute resolution, but the most prominent outcome of the litigation is that usually the decision is in the favor of one side and the other side gets nothing. In this study, the court decision making process is composed of components like stay orders, legal process, "time consuming" and "needs resources."

Conclusion

The study implies that the purpose of using alternative dispute resolution techniques was to save resources and time. As per literature, Carver, Allison, Fowler, Ertel, Keiser and Vondra (2000) state that the motive behind using ADR is that it saves time and money, whereas the litigation and court proceedings require effort, time, and money. Likewise, Lyons (2012) Working together towards a solution saves time and resources. Additionally, Gosselin (2007) stated that conflict could be resolved by many methods, like mediation, arbitration, and litigation, but they are time consuming and expensive, and often one sided. Negotiation resolves disputes and builds relationships while Keddy (2010) that most effective method for dispute resolutions are alternative dispute resolution approaches. Also, Weiss (2020) added that there is literature on dispute resolution and conflict management, but a lack of particle examples of negotiations. This shows that negotiation is a useful tool in dispute resolution and conflicts.

Of all the alternative dispute resolution techniques, negotiation is the most efficient and favorable method. It saves time, money, resources, and energy. The findings show that most of the problems and disputes in the BRT project were resolved with the help of negotiations. It also shows that the project team preferred to resolve the disputes and conflicts with the help of negotiation, consultations, compromise, and mutual cooperation.

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