



## **OPTIMIZATION OF COURT INVOLVEMENT IN CONSTRUCTION ARBITRATION IN SRI LANKA- LESSONS FROM INDIA AND ENGLAND**

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Construction industry is the process of constructing a building or a public and private physical improvement such as roads, railway, power plants, bridges or dams, etc. These are engaged with local and foreign regulations, employment issues, technical issues and also different profit margins. Construction industry is a complex field. This complexity derives mostly from the construction projects and contracts and extends to the level of disputes between parties. Such disputes can be concluded at any level of construction and these litigations tend to be the most intensive and multifaceted compared to other civil disputes. However, the traditional way of court litigations does not truly address the technological background of these disputes. It requires a process for resolving these disputes through an independent mechanism which involves an independent and impartial third party with expertise and knowledge about the field. These processes are recognized as Arbitration, Mediation, Conciliation and Negotiation. The objective of these methods is to be an alternative to court litigation and to ensure confidentiality and understanding among the parties, saving costs and utilize highly technical support. This study argues that Arbitration is the best method to solve construction disputes as it includes more sophisticated features like low cost, short time period and well-planned output (the arbitral award). Though it has been established as an alternative to court litigation, arbitration still does not function completely outside the judicial system. Court intervention in the arbitration process cannot be refused and court assistance in the process maybe sought at many stages. Basically there can be no arbitration without the assistance and the guidance of the judiciary. This can cause a delay in the process of arbitration and undermine the real objectives behind the process. The methodology of this research is based on case analysis and literature review of articles. The literature review suggests the necessity of minimizing court intervention in Construction Arbitration. Progressive Arbitration modules which have been carried out in other jurisdictions like India and England which can be used as a guideline for Sri Lankan law are reviewed in this research. A questionnaire survey to identify the level of knowledge of professionals regarding Construction Arbitration and the necessity of optimizing court intervention was also conducted. Therefore, the main objective of this study is to analyse the implementation of a new legal framework which can avoid the problems that can occur due to court intervention at many levels of the Arbitration process. In conclusion the study makes suggestions to ensure effectiveness of the process by obtaining guidance from other jurisdictions.



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