

SPECIAL FEATURES, EXPERIENCES AND NEW TRENDS IN ARBITRATION IN THE CONSTRUCTION INDUSTRY OF SRI LANKA

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ABSTRACT

In Sri Lanka, Alternative Dispute Resolution (ADR) methods such as negotiation, conciliation, mediation, adjudication and arbitration can be identified as preferable alternatives for replacing traditional litigation as they would be more effective in time and cost. Arbitration is a voluntary procedure available as an ADR method to litigation. The main feature of arbitration is that it is consensual in nature and private in character. Arbitration Act of Sri Lanka No 11 of 1995 stated that arbitration principles and contents are based on UNCITRAL Model Law. At present, many parties to construction disputes have no interest in pursuing for arbitration. Therefore, professionals should take collective measures to increase the effectiveness of arbitration. With the increase in construction activity after 30 years of civil war the construction industry of Sri Lanka needs a fast and cost effective dispute resolution method. The aim of this research is to critically evaluate the arbitration method, its experiences and new trends as an ADR method in the construction industry of Sri Lanka, and suggest improvements to its practice in order to make arbitration procedure more effective. The research is to develop arbitration as an effective and efficient ADR method in the Sri Lankan construction industry. Literature review for the research was carried out together with the survey. The questionnaire survey was used among construction industry professionals. Accordingly, data collection was selected only from experienced professionals in the industry. This research is limited to the arbitration in the construction industry of Sri Lanka.

The findings of the research indicate that the professionals who are involved in the construction industry have low level of satisfaction on the current practice of arbitration. However, they believe that arbitration is an effective mechanism for dispute resolution in Sri Lankan construction industry. The results of this study enable researchers to gain an understanding of the current arbitration practice and recognise significance of advantages, drawbacks and suggestions for the development of arbitration in the construction industry of Sri Lanka.

Keywords: ADR Methods; Arbitration; Construction Industry; Dispute Resolution.

1. INTRODUCTION

The construction industry forms a major sector of Sri Lankan economy. It directly affects the economic growth. Disputes are common features of the construction industry (Ashworth, 2002). Disputes might arise at any point during the construction process. Construction industry creates a multitude of disputes due to its various inherent characteristics. In early days of construction industry in Sri Lanka, most disputes were settled amicably on the site at an informal meeting between the client and contractor with resident engineer. However at present construction disputes are more lengthy and complicated than ordinary civil cases in Sri Lanka.

It can be seen that employers, contractors, and consultants resort to various approaches in their attempt to resolve disputes. Such approaches may bring short term benefits to parties. However, long term effects as a result cannot be ruled out. The professionals should persuade stakeholders to adhere to the fundamentals of arbitration, law and ethics in the process of dispute management and resolution in order to have a more sustainable and healthy construction industry.

According to the literature review on dispute resolution, it is found that ADR methods that many have stated that it is sometime a wastage of time, cost and effort as the involved parties is unable to come to an agreement in their decisions. It is also seen that arbitration method has drawbacks and pitfalls apart from their respective advantages.

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1.1. AIM OF THE RESEARCH

The aim of this research is to critically evaluate the arbitration method as an alternative to dispute resolution practice, evaluate the effectiveness of arbitration method in the Sri Lankan construction industry and suggest improvements to the construction arbitration in Sri Lanka in order to make arbitration more effective and viable.

1.2. OBJECTIVES

To accomplish the above aim following objectives were identified,

- To explore the image of arbitration as an ADR method and its level of satisfaction.
- To find out problematic areas of construction arbitration in Sri Lankan industry.
- To evaluate the applicability and the effectiveness of the arbitration method as an alternative to litigation in the Sri Lankan construction industry.
- To analyse the current arbitration process, advantages and disadvantages along with the arbitration procedure.
- To develop required improvements in arbitration practice to achieve an efficient performance and enhance the satisfaction in the Sri Lankan construction industry.

1.3. RESEARCH METHODOLOGY

To accomplish the above aim and objectives, a literature review was conducted to find out the available research gaps and the extent to which research has been carried out on arbitration. The developed research questionnaire used to gather data from the construction industry professionals who are closely engaged with construction activities and the collected data was analysed using statistical tools.

1.4. SCOPE AND LIMITATIONS

This research was limited to evaluate the arbitration method and its practice as an ADR method in the construction industry in Sri Lanka. The unit of analysis of the research was the dispute-resolving experts in the construction industry mainly consisting of experienced professionals in the organizations.

2. LITERATURE REVIEW ON DISPUTES RESOLUTION METHODS IN THE CONSTRUCTION INDUSTRY

The literature review is one of the core components in a research process. Accordingly this part has been mainly focused on the arbitration practice in the construction industry of Sri Lanka. In addition the literature review has been narrowed to the identifying of conflicting areas in the construction arbitration.

2.1. LITIGATION AS A DISPUTE RESOLUTION METHOD

“Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser-in fees, expenses, and waste of time”

- Abraham Lincoln
(Ide, 1993)

Above statement is universal and litigation is the standard and conventional dispute resolution mechanism used all over the world. Litigation as dispute resolution method has been criticised due to the adversarial nature, high cost and time consuming characteristics. According to previous studies litigation have not been found to be a suitable method for dispute resolution in construction industry. It is too expensive and a time consuming method. Also, there are several disadvantages in litigation like

stressfulness, inflexibility and formality of court processes, restricted scope of claims and remedies as well. Construction industry professionals face the aforesaid difficulties. Hence they commenced finding alternative dispute resolution (ADR) methods. In **State of Kerala, India vs. Joseph Auchilose** ^[1], the Indian court observed that complex and expensive court procedure compelled jurists to search for an alternative form of resolution of disputes. Ashworth (2002) has identified litigation as an unsuitable method for dispute resolution in construction industry.

Therefore, the industry expects an efficient and successful dispute resolution method as an alternative to the adversarial litigation process. Construction industry around the world has been complex or varied and is proving to be more complex in the time to come. Due to the complexity, disputes are considered to be inevitable in construction industry. Therefore resolution of disputes has become a noteworthy area of construction industry research.

3. ARBITRATION AS AN ALTERNATIVE DISPUTE RESOLUTION METHOD

ADR methods arose in the last two decades as a response to the aforesaid disadvantages *viz* confidentiality, high cost and lengthy process associated with litigation. According to Brooker (1999), arbitration is an ADR method which has a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute with the parties. Furthermore, Cheung *et al.* (2000) identified some main unique characteristics of arbitration as confidentiality, preservation of business relationship, cost and time saving, flexibility, voluntariness, generation of creative agreement, neutrality, fairness and high levels of satisfaction which could be directly or indirectly overcome drawbacks in arbitration methods. The construction industry uses arbitration as its principal final mode of dispute resolution (Sims *et al.*, 2003). It can be considered as a suitable mechanism for many construction industry disputes. Despite its decline, arbitration is still the preferred method of final dispute resolution in the construction industry. (Sims *et al.*, 2003, p.550).

3.1. ARBITRATION PRACTICE IN SRI LANKA

With the introduction of the Arbitration Act No. 11 of 1995, construction disputes are more likely to move towards the arbitration in Sri Lanka. The Arbitration Act of Sri Lanka No. 11 of 1995 provides a legislative framework for the effective conduct of arbitration proceedings. (Wimalachandra, 2007)The objectives are stated in the preamble of this Act, one of its objects is to make “Comprehensive legal provisions” for the conduct of arbitration proceedings and the enforcement of arbitral awards. The second object is to make legal provision to give effect, to the principles of the Convention on the recognition and enforcement of foreign award of 1958 (The New York Convention). About 120 countries have signed the New York Convention and it facilitates enforcement of foreign arbitral awards in all contracting states including Sri Lanka.

The arbitration institutions such as Institute for Development of Commercial Law and Practice (ICLP), Sri Lanka National Arbitration Centre (SLNAC) and International Chamber of Commerce Sri Lanka (ICCSL) provide better infrastructure for arbitration practice. Arbitration plays a major role in commercial matters (Kanag-Isvaran, 2006). Kanag-Isvaran (2006) identified, enhancing its finality, waive appeal by exclusion agreement, limited court intervention, party autonomy, recognition and enforcement of award are as basic elements of the Act. In the construction industry each individual contract contains a degree of uniqueness even though the contracts may be based upon standardised forms. The construction industry has generally used arbitration rather than civil courts as the means of settling any disputes which arise between the contractor and the employer. These arise because the disputes are more generally of a technical nature and the parties are happier to refer their disputes to an expert who understand the technical problems involved and who could bring other knowledge of usual practices of the industry to the formation of his or her judgment.

The Arbitration Act of Sri Lanka No. 11 of 1995 treats arbitration in the field of construction without taking in to consideration the value of contract or the disputed amount. In Sri Lanka arbitration is the only legally enforceable ADR method backed by the Act. The Act was enacted as a comprehensive

Act on arbitration to replace the outdated legislation in existence, which was inadequate to settle disputes through arbitration. The Sri Lanka Act provides that an arbitration agreement shall be in writing. It can be contained in a single document or in an exchange of letters, telexes, telegrams or other means of telecommunication which provide records of the agreement. It mentions challenges to jurisdiction, duties of the arbitrators, corrections and interpretation etc. Accordingly, Sri Lankan Act to a great extent follows the UNCITRAL Model Law.

This Act in itself does not lay down any rules of Arbitration. However, Act deals with the composition of the arbitral tribunal, the jurisdiction of the arbitral tribunal, the conduct of arbitral proceedings, awards, enforcement of awards, recognition and enforcement of foreign arbitral awards and grounds for refusing or enforcement of awards. Due to the absence of strict rules of arbitration provided by the Act, parties are free to choose the rules under which their arbitration should be conducted. According to the Section 32 (1) (a) of the Act, it expressly states the grounds on which such an order can be set aside.

The construction industry appears to favour the resolution of disputes by arbitration proceedings. These proceedings enable a determination by a respected person usually from a discipline apart from the dispute, and will be resolved in a manner, which reflects the contractual and commercial aspects of the project. Applicable law will be the Sri Lankan Law and the proceedings should be held in the English language. Therefore parties can carefully draft an arbitration agreement to include arbitration clauses. It has to be done after careful scrutinising of the clauses that are in English language. When there is an arbitration clause, grieved parties concerned cannot seek a remedy in courts because in such case the jurisdiction is not considered by virtue of the arbitration agreement.

3.2. CONDITIONS OF CONTRACTS RELATING TO ARBITRATION PRACTICE

Standard forms of contract published by the Institute of Construction Training and Development of Sri Lanka (ICTAD, 2007) is the most popular standard form used in Sri Lanka. It provides an arbitration clause for settlement of construction disputes through their Conditions of Contracts document. According to the arbitration agreement recommended by ICTAD (clause 67) the period for commencement of arbitration must take place within a maximum of 90 days. Clause 48.1 of the Standard Bidding Document (SBD) of the ICTAD (Guidelines of the Government of Sri Lanka) (2007) provides Arbitration clause for construction contracts.

According to the ICTAD (2007) conditions of contract the adjudicator shall be a single person appointed by agreement between the parties. If parties are unable to reach the agreement within 14 days of such request of agreement, the adjudicator shall be appointed by the ICTAD. Either party may initiate the reference of the dispute to the adjudicator by giving 07 days notice to the other party. Then the adjudicator shall give his determination about the dispute within 28 days -or such other period agreed by the parties- of receipt of such notification of a dispute. This is very tight time scale as it may work in favour of the claimant because he will be able to prepare his case over sometime, while giving short time scale to in the other party. On the other hand, these time restrictions give some advantage of immediate, inexpensive dispute resolution mechanism.

On the other hand *Federation Internationale Des Ingenieurs* (FIDIC) document, which is another popular standard form, states that the maximum period to appoint an arbitrator is 154 days to arrive at the final decision (Bunni, 2003). In Sri Lanka all disputes arising out of contracts should be dealt with in accordance with the provisions of Arbitration Act No: 11 of 1995. However, Sri Lankan Arbitration Act does not specify a time limit. FIDIC conditions of contract of 1999 have introduced Dispute Adjudication Board (DAB) system as a pre-Arbitration requirement. Accordingly, Clause 20 of FIDIC 1999 dispute between employer & contractor shall be referred to Dispute Adjudication Board as a pre-Arbitral step before reference same for arbitration –When there is no settlement before DAB only the same dispute can be referred for Arbitration.

4. PROBLEMATIC AND CONFLICTING AREAS SPHERES OF ARBITRATION

Sri Lanka Arbitration Act - No 11 of 1995 states arbitration principles and elements of UNCITRAL Model Law. However, out of all ADR methods, arbitration is the commonly practicing ADR method in the Sri Lankan construction industry. When practicing arbitration as an ADR method, a third party neutral render a decision based on information submitted by the dispute parties, following the same manner as in the traditional legal trial (Marsoof, 2006). Dissatisfaction with arbitration within the construction industry has been perceived to have complexity, slowness and expense. Many legal researchers stated that Sri Lankan arbitration process has become adversarial and expensive. Therefore it is necessary to review and improve the arbitration practice periodically in order to minimise the cost and complexity of the procedure. Arbitration is the commonly practicing ADR method however; it has many unique drawbacks when practicing arbitration. Research findings have indicated drawbacks of Sri Lankan arbitration, as delaying the process, high cost of arbitrators and other facilities, higher involvement of lawyers, less concentration on technical issues, unawareness, different resolutions given by different arbitrators, difficulty in challenging the award, inability to conduct multi party disputes using arbitration and limited jurisdictions, same procedure being applied for all disputes, impossibility of maintaining the relationship between parties, less satisfaction with the process. Further most professionals not being fully aware of the arbitration process. Also, there are no facilities to conduct arbitration other than in Colombo the commercial capital city in Sri Lanka.

The serious criticisms against the arbitrations in Sri Lanka are the time factor. The Arbitration agreement incorporated by the ICTAD in the Conditions of the Contract under clause No. 67 stipulates that the period within which the award should be made is 4 months, although the Arbitration Ordinance of 1948 stipulates a period of 3 months. However, present Arbitration Act does not specify a time limit. Parties are free to fix a desired time period for proceeding and award of the agreement. However, there may be an extension with the consent of the parties. According to the arbitration agreement recommended by ICTAD the period for commencement of arbitration must take a maximum period of 90 days and in accordance with the FIDIC - Conditions of Contracts the maximum period to appoint an arbitrator is 154 days. Hence the time factor remains a major drawback in the arbitration process.

There are important provisions for speedy arbitration hearings during the course of the contract under Rule 07 of the JCT Arbitration Rules. However, the experience of arbitrators themselves is that they are little used. Some countries in the Middle East with which Sri Lankan contractors have entered into construction contracts, are not parties to New York Convention and they all have resort to other regional arrangements such as the *Amman Arbitration Convention* which requires all arbitral proceedings to be conducted in the Arabic language.

5. NEW TRENDS OF ARBITRATION IN SRI LANKA

In Sri Lanka the arbitration process is conducted in two ways. The *ad-hoc* arbitration is conducted when the parties decide on their own procedure to be adopted in the conduct of the arbitration proceedings. It is observed that most domestic construction contracts are conducted on *Ad-hoc* procedure. Arbitral institutions under its own rules of arbitral procedure conduct the *Institutional* arbitration. It provides the framework of rules and such other facilities for entire proceeding. However any aggrieved party can challenge arbitral award at Commercial High Court.

Most Arbitration Acts of the world (including those following the UNCITRAL Model law) usually allow parties to change the substantive law to be applied, if it is a transactional contract. The Arbitration Act of Sri Lanka (Act No: 11 of 1995) goes a little further. The Sri Lankan courts refused to incorporate the arbitration agreement into a subcontract. The Courts of Law in Sri Lanka examined and interpreted the language of the contracts in question to see whether general principles of arbitration are applicable. Arbitrators may keep away from writing reasons for the award and only the final decision of the arbitrators will be enough for a valid award. This will be very useful for the settlement of disputes relevant to construction industry.

Many Researchers in Sri Lanka stated that arbitration process has become adversarial and expensive. However, superior courts of Sri Lanka reviewed and improved the arbitration process. There are some cases which were decided by Superior Courts of Sri Lanka and now those have become a part of arbitration law as a judicial precedent. Accordingly, case law developed arbitration procedure of Sri Lanka. In *Southern Group Civil Construction (Pvt) Limited vs. Ocean Lanka (Pvt) Limited* ^[2], the Court discussed and interpreted the grounds for setting aside an arbitral award and the time limitation for challenge the arbitrator's award. This was an application for setting aside arbitral award under section 32 of the Arbitration Act of Sri Lanka. In *State Timber Corporation vs. Moiz Goh (Pvt) Ltd.* ^[3], court held that the District Courts of Sri Lanka has no jurisdiction to enter in to the arbitration proceedings.

When there is an arbitration clause the aggrieved parties concerned cannot seek a remedy in courts because in such case the jurisdiction is waived by virtue of the arbitration agreement. It was held in the case of *Lanka Orient Leasing Company Ltd vs Ali and another* ^[4]. *Mahaweli Authority of Sri Lanka vs. United Agency Construction (Pvt.) Ltd.* ^[5] case was an appeal to the Supreme Court from an order of the Commercial High Court under section 37 of the Arbitration Act No: 11 of 1995. The Supreme Court decided that the time period necessary for leave to appeal. The need to set out in the application the grounds for setting aside the award period for making the application – whether grounds set out in written submission after lapse of that period can be considered.

6. ANALYSIS AND RESEARCH FINDINGS.

After identifying the research problem, a comprehensive literature review was conducted to explore the legal framework of Arbitration. The literature review was carried out mainly by referring books, Statutes and journal articles. The literature review focused more on the publications by the key authors and journals in the study domain. The broad topics addressed during the literature review were construction disputes and ADR methods in the construction industry. The review was further extended to research methodology-specially relating to quantitative research.

Accordingly, literature review was carried out to fulfil the aim of the research. First, it identified the various aspects related to arbitration and other different methods. Further, it compared and contrasted the advantages and disadvantages of the arbitration in order to analyse the current practice to overcome the problems in arbitration. When compared with litigation, arbitration method has several advantages and it was necessary to develop arbitration method to suit the nature and the requirement of the industry.

The data collected from the detail questionnaire survey was analysed on one to five Likert scale, less important to most important. Respondent's data was based on a statistical analysis tool such as Mean weighted Average, Kendall's Coefficient of Concordance and Coefficient of Variation (CV).

6.1. RESPONDENT AND EXPERIENCE

25 Questionnaires were distributed among leading experienced professionals in the construction industry. 18 questionnaires were received. Figure 1 and 2 shows the details of respondents

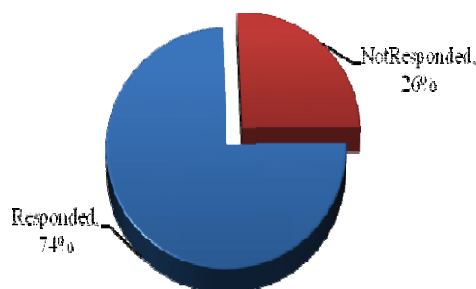


Figure 1: Rate of Respondents

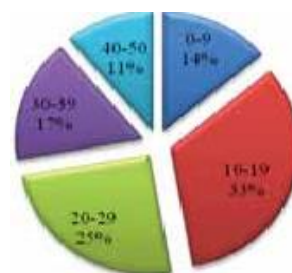


Figure 2: Years of Experience of Respondents

6.2. GENERAL CONSIDERATION OF ARBITRATION

According to analysis of data, ADR methods were ranked in Table 1 and it is considering mean rating of their effectiveness in the present practice.

Table 1: Ranked ADR Methods Based on their Effectiveness

ADR Method	Mean of Rating	Rank
Negotiation	1.35	1
Adjudication	2.18	2
Mediation	2.46	3
Arbitration	3.82	4

Arbitration got the 4th place of ranking, however, that should prevail as an ADR method in order to settle disputes which have complex scope and to avoid courts for those kinds of disputes. Also, many professionals who have got more experiences on construction industry showed a clear understanding of the present arbitration practice.

6.3. IDENTIFICATION OF ADVANTAGES OF ARBITRATION

Within the identified nine advantages, the mean level of satisfactions of eight advantages were over 3.00 out of five point Likert scale. These advantages were ranked based on the mean weighted rating worked out by the questionnaire survey as shown in the table 2. The CV of each and every factor were calculated and included in the Table 2. CV of first eight factors were below 40% which can be considered as low CV, even the CV of ninth factor is 42.41%. Thus, it was ensured that the consistency of data set is within an accepted level.

Table .2: Ranked Advantages of Arbitration

Statement	Mean Rating	% CV	Rank
Expertise can be involved as Arbitrators	4.38	18.29%	1
Confidentiality	4.26	17.29%	2
Party autonomy	4.17	24.68%	3
Finality and reliably enforced(Enforceability)	3.68	25.17%	4
Less formal and simple	3.47	35.47%	5
Flexibility of procedure	3.31	36.16%	6
Expeditious	3.28	33.14%	7
Fair and genuinely neutral decision	3.18	29.78%	8
Inexpensive method	2.82	42.41%	9

6.3.1. DISCUSSION OF ADVANTAGES OF ARBITRATIONS

Advantages of arbitration, ranked above were descriptively analysed in order to create broad scope using above results. Parties have the autonomy to select their arbitration panel, procedure and the venue which will save the time and money. Arbitration will take place only in the presence of parties involved and the panel. The whole process of arbitration has flexibility to change according to the necessity of the parties. Whereas Litigation has rigid process and they are not flexible and cannot change considering characteristics of the disputes.

6.4. DRAWBACKS OF ARBITRATION

Within the identified twelve disadvantages, the mean level dissatisfaction of eleven disadvantages was over 3.00 out of five point Likert scale. These disadvantages were ranked based on the mean weighted rating worked out by the questionnaire survey as shown in the table 3. CV of 9 factors were below 35% which can be considered as low CV. Thus, from that it is ensured that the consistency of data set is within an accepted level.

Table 3: Ranked Drawbacks of Arbitration

Statement	Mean Rating	CV %	Rank
Higher involvement of lawyers	3.86	26.38%	1
Less concentration on Technical Issues	3.81	24.98%	2
Delaying of arbitral award	3.67	31.27%	3
Same procedure apply for settlement of all disputes	3.64	32.28%	4
High fees/of the arbitrators	3.61	30.54%	5
Weak tribunal	3.33	30.43%	6
Similar to court procedure	3.28	35.44%	7
Different arbitrators will find dramatically different resolutions	3.19	24.61%	8
Unawareness of the method	3.14	35.84%	9
Arbitration cannot easily conduct multi party disputes	3.08	32.32%	10
Limited jurisdiction	3.00	39.04%	11
Challenge to award	2.83	28.61%	12

The drawbacks discussed above were descriptively analysed using the same methodology as in advantages. The fees (compensation) of arbitrators and the cost of other facilities such as venue, documents have to be borne by the parties. If the case is dragged for several months the cost would increase even than litigation. There are limited numbers of technically qualified arbitrators in Sri Lanka. Therefore some arbitrators cannot control the construction proceedings. Parties have great autonomy to control procedure and select arbitrators; however in practice they do not use this opportunity to increase the effectiveness of the arbitration. Unawareness of professionals and parties involve in the construction industry are major problem for better practice of arbitration.

In construction industry employers, contractors, sub-contractors and other parties are involved in disputes due to different reasons. Arbitration has a somewhat rigid procedure than other ADR methods which make difficult to handle multiparty disputes. On many occasions the power of arbitrators is limited which is given by the Act. Therefore in Sri Lanka, summons, interim measures etc should be enforced by the Commercial High Court. It affects independence of the arbitrators and further it increases the involvement of litigation.

7. SUGGESTIONS FOR DEVELOPMENT OF ARBITRATION

Suggestions were ranked based on the mean weighted rating worked out by the questionnaire survey as shown in the Table 4. Even the highest CV is 41.06%. Thus, it is ensured that the consistency of data set is within an accepted level.

Table 4: Ranked Suggestions for Development of Arbitration

Statement	Mean Rating	CV %	Rank
Adopting of qualified arbitrators	4.56	15.25%	1
Changing of attitude of professionals	4.19	22.67%	2
Conducting awareness programmes	4.11	24.52%	3
Involvement of experts from the construction industry as arbitrators	4.06	21.21%	4
Introduction of recommended arbitration Clause / Agreement	3.89	26.64%	5
Introduce Construction Industry (model) arbitration rules	3.81	23.35%	6
Establishment of statutory construction arbitration	3.64	34.23%	7
Use inexpensive conference Rooms/venues	3.06	37.47%	8
Conduct the arbitration a full day basis	2.86	41.06%	9

The suggestions which were ranked above were descriptively analysed in order to create broad scope of them. Accordingly, parties should select qualified arbitrators considering the nature of the dispute. The most appropriate composition of the arbitral tribunal should consist of two technically qualified arbitrators and one Lawyer or retired Judge as the chairman. Experienced professionals in the industry should conduct awareness programme to the other professionals who are involved in the construction arbitration. Further, the awareness should focus on changing attitude of professionals on arbitration and promote the correct practice of arbitration as ADR method. Professionals involved in the construction have the knowledge and suitable background to give the most suitable and fair awards for disputes. Thus engineers, quantity surveyors and architects should enhance their knowledge on arbitration and increase the effectiveness of the method.

FIDIC Conditions of Contract and ICTAD-SBD forms of contracts provide arbitration clauses. However, it should be described more than that in the conditions of contract in construction contracts in order to understand easily. Therefore, qualified arbitrators or experienced professionals should draft and publish comprehensive arbitration agreement. Further, they should prepare model arbitration rules and guidelines for the parties and arbitrators who wish to use construction arbitration as a dispute resolution method. Also facilities for arbitration hearing should be provided outside Colombo.

8. CONCLUSIONS AND RECOMMENDATIONS

Disputes are considered to be inevitable in construction industry. First, it identified the process of arbitration. After that, it explored the arbitration process which is practiced in the Sri Lankan construction industry. Further, it was compared and contrasted the advantages and disadvantages of the arbitration in order to analyse the capability and the understanding of current practice to overcome the problems in arbitration. The identified issues in the process of arbitration and the suggested solutions for the success of arbitration practice in construction industry have been discussed. The study has identified the current arbitration practice in construction industry and introduced suggestions to increase the effectiveness of arbitration. The professionals involved in the construction industry have the responsibility to increase the effectiveness of the arbitration. Appointment of a Lawyer, Architect and an Engineer to the Arbitral tribunal may be very appropriate. Government should promote the current centres that carry out arbitrations in Sri-Lanka as well as help in the formation of an Institute of Dispute Resolution Management to settlement of disputes and educate and train professionals in the field of arbitration.

Followings are some further recommendations suggested to the authorities in the Sri-Lanka construction industry.

- Involvement of experts from construction industry as arbitrators

- Adopt Construction Industry Arbitration (Model) Rules
- Use inexpensive Conference Rooms
- Change the attitude of professionals
- Establishment of Society of Construction Arbitrators Society of Construction Law
- Introduce Recommended Arbitration Clause / Agreement
- Conducting of Awareness programmes

Arbitration is a voluntary procedure available as an alternative dispute resolution method to litigation. The professionals involve in the industry have the responsibility to increase the effectiveness of the construction arbitration. Disputes resolved by arbitration will no doubt be beneficial to the country. The construction arbitrator needs to possess a strong personality in displaying humility, empathy and understanding for the burdens that the disputing parties have to bear. Accordingly, professionals should increase the effectiveness of arbitration process in construction industry of Sri Lanka.

9. REFERENCES

- Ashworth, A. and Hogg, E., 2002. *Willis's practice and procedure for the quantity surveyor*. 11th ed. London: Blackwell Science.
- Ide, H., 1993. Review of William T. Parry and Edward A. Hacker, Aristotelian logic. *History and Philosophy of Logic*, 14(1993), 248-249.
- Brooker, P., 1999. Survey of construction lawyers' attitudes and practice in the use of ADR in contractors' disputes. *Construction Management and Economics*, 17, 757-765.
- Cheung, S.O., Tam, C.M., Ndekugri, I. and Harris, F.C., 2000. Factors affecting clients' project dispute resolution satisfaction in Hong Kong. *Construction Management and Economics*, 18, 281-294.
- Bunni, N.G., 2003. *The FIDIC forms of Contract*. 3rd ed. London: Blackwell publishing.
- Arbitration Act No 11 of 1995*. Sri Lanka Legislative Enactments, Ministry of Justice of Sri Lanka.
- Kanag-Isvaran, K.K., 2006. International commercial arbitration a Sri Lankan perspective. *In: K. Kanag-Isvaran, and S.S. Wijerathna.; eds. Arbitration law in Sri Lanka*, Colombo: The Institute of the Development of Commercial Law and Practice, 47-60.
- Marsoof, S. P.C., Hon. Justice, 2006. Recognition and enforcement of awards. *In: K. Kanagisvaran, S.S. Wijerathne; eds. Arbitration law in Sri Lanka*. Institute for Development of Commercial Law and Practice Colombo: ICLP, 139-178.
- Wimalachndra, L.K., 2007. Alternative methods of dispute resolution. *Junior Bar Law journal*, 2 (3), 55 - 70.
- ICTAD, 2007. *Standard Bidding Document - Procurement of Works*, 2nd ed. Colombo: Institute for Construction and Training and Development.
- Sims, J., Capper, P. and Bunch, T., 2003. Construction industry arbitration. *In: J. Tackaberry, and A. Marriot; eds. Bernstein's Hand book of Arbitration and Dispute Resolution practice*. London: Sweet & Maxwell, 533-589.

10. END NOTES

1. State of Kerala vs. Joseph Auchilose (1990) 101 AIR ker 106
2. Southern Group civil construction (Private) Limited vs. Ocean Lanka (private) Limited 2002 SLLR (1) 190
3. State Timber Corporation vs. Moiz Goh (pvt) Ltd 2000 SLR (2)316.
4. Lanka Orient Leasing Company Ltd Vs Ali and another (1999 SLLR (3) 109).
5. Mahaweli Authority of Sri Lanka Vs. United Agency Construction (Pvt.) Ltd. (2002(1) SLLR 08)