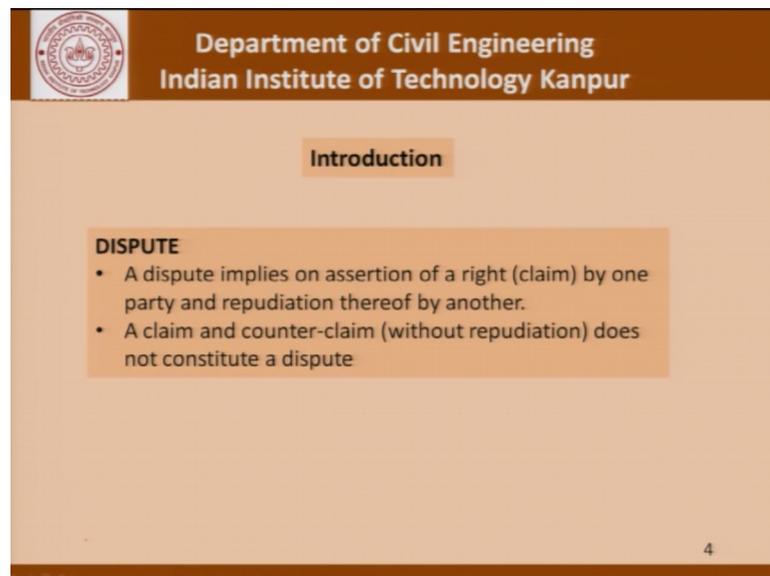


Principles of Construction Management
Prof. Sudhir Misra
Department of Civil Engineering
Indian Institute of Technology, Kanpur

Lecture – 35
Dispute resolution in construction projects

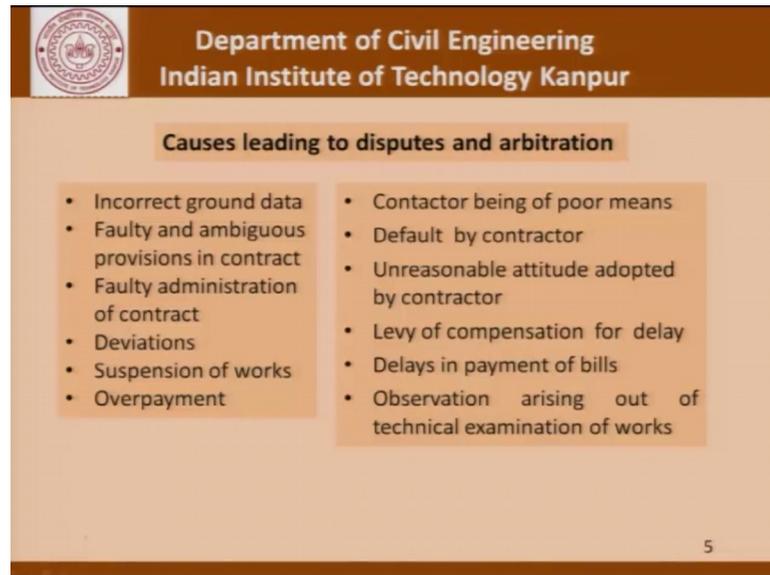
[FL] and welcome back to the series of lectures where we are talking about principles of construction management and in this lecture, we will address and talk about issues relating to dispute resolution and construction projects. And I must acknowledge once again the discussions that I had with Professor K. C. Iyer of the department of Civil Engineering at IIT, Delhi. Now we already know what a dispute is a dispute implies assertion of a right which can be called a claim by one party and repudiation thereof by another. I have emphasized that a claim and a counter claim without repudiation does not really constitute a dispute.

(Refer Slide Time: 00:39)



So, what we are going to talk about today is how these disputes can be resolved as far as the construction project is concerned. And what are some of the simple ground rules that operate in the minds of an arbitrator or a court when they are trying to address or resolve these disputes.

(Refer Slide Time: 01:14)



Department of Civil Engineering
Indian Institute of Technology Kanpur

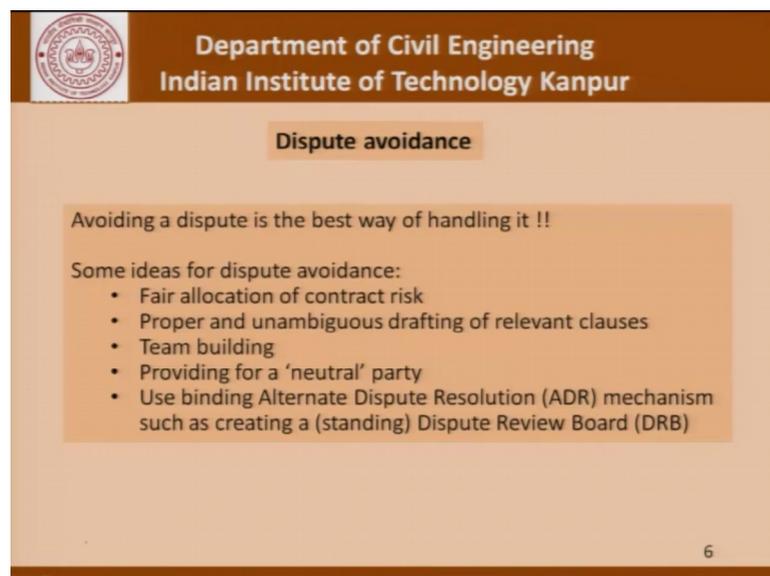
Causes leading to disputes and arbitration

- Incorrect ground data
- Faulty and ambiguous provisions in contract
- Faulty administration of contract
- Deviations
- Suspension of works
- Overpayment
- Contactor being of poor means
- Default by contractor
- Unreasonable attitude adopted by contractor
- Levy of compensation for delay
- Delays in payment of bills
- Observation arising out of technical examination of works

5

Now, we also seen some of the causes that leads to disputes and arbitration, incorrect ground data faulty and ambiguous provisions in contracts faulty administration of contracts, deviations in work suspensions over payments contractors being a poor meal defaults unreasonable attitude levy of compensation for delay in payments and observations arising out of technical examinations, which is very closely related to quality control and acceptance or rejection of material or products in the construction project.

(Refer Slide Time: 01:46)



Department of Civil Engineering
Indian Institute of Technology Kanpur

Dispute avoidance

Avoiding a dispute is the best way of handling it !!

Some ideas for dispute avoidance:

- Fair allocation of contract risk
- Proper and unambiguous drafting of relevant clauses
- Team building
- Providing for a 'neutral' party
- Use binding Alternate Dispute Resolution (ADR) mechanism such as creating a (standing) Dispute Review Board (DRB)

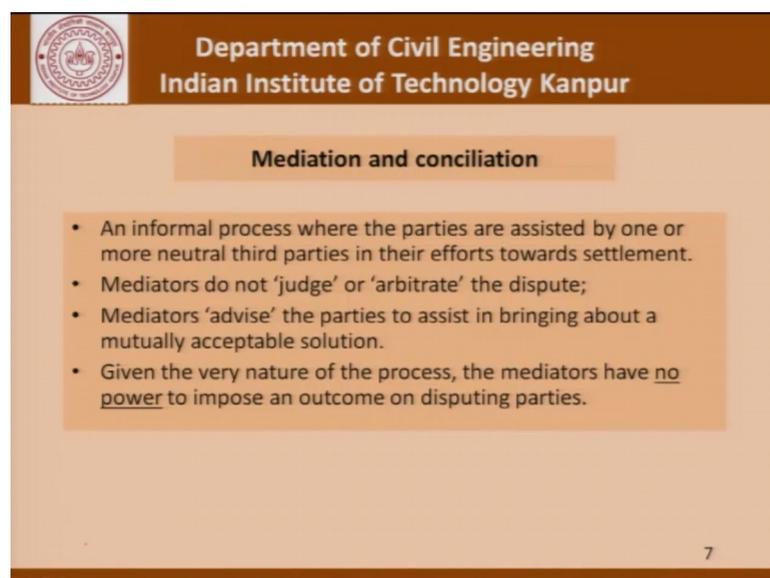
6

Now, dispute avoidance is obviously, the best form of dispute redressal. If we have a situation where disputes simply do not arise, there is no reason to have an elaborate mechanisms for dispute resolution. So, it is like saying that avoiding the accident is the best form of safety.

Now, coming back to this discussion on disputes avoiding a dispute is the best way of handling it. Now how do we bring about or what are the kind of things that come to our mind when we talk of dispute avoidance. Fair allocation of contract risk, now this though is a long way as for as dispute avoidance is concerned. In cases when the risk is unduly transferred towards the contractor the chance of the dispute is very high. Proper and unambiguous drafting of relevant clauses this is something is very important and helps the contractor understand the rules of the game much better.

So, if the contract clauses specially those which are related to the dispute prone clauses, if that drafting is proper and ambiguous clear the chances of disputes is very small. Team building, providing for a neutral party, and using binding alternate dispute resolution mechanisms which are also called ADR mechanisms such as creating a standing dispute review board. These are steps that can help a long way in avoiding or not letting at dispute grow. A disagreement which may arise at site will not grow into a full blown dispute, if it is addressed initial stages through an alternative mechanism. Alternative mechanisms could include what is called mediation and conciliation.

(Refer Slide Time: 03:38).



 Department of Civil Engineering
Indian Institute of Technology Kanpur

Mediation and conciliation

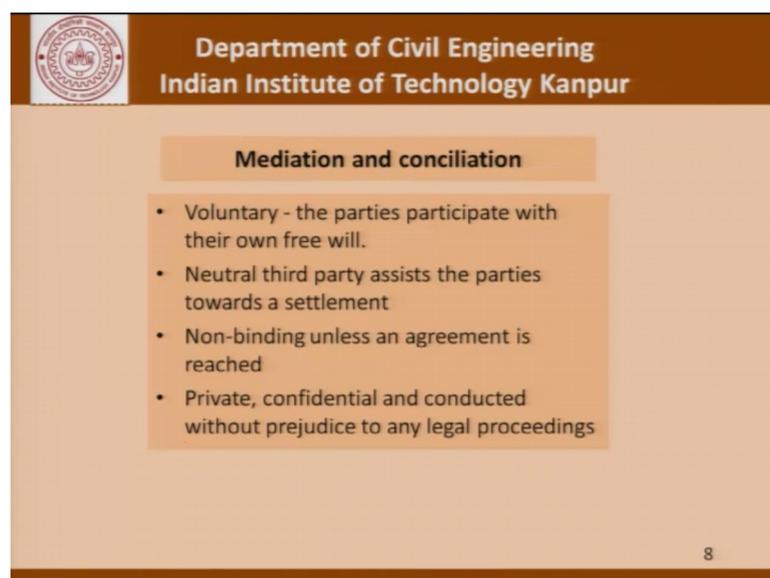
- An informal process where the parties are assisted by one or more neutral third parties in their efforts towards settlement.
- Mediators do not 'judge' or 'arbitrate' the dispute;
- Mediators 'advise' the parties to assist in bringing about a mutually acceptable solution.
- Given the very nature of the process, the mediators have no power to impose an outcome on disputing parties.

7

This is an informal process where the parties are assisted by one or more neutral parties in their efforts towards settlement of a disputes. Mediators do not judge or arbitrate the disputes; we must understand that mediation is not the same process as arbitration. Arbitration has certain very important legal overtones and therefore, mediators do not judge or arbitrate the dispute. We must recognize the fine line between mediation conciliation which are not legally binding, which have a much lower standing as for as the legal implications the legal sanctities concerned compared to arbitration. Arbitration is a quasi legal process, and only arbitrators who have a clear understanding of the rules of evidence of the implications of an award and so on.

They can carry out the process of arbitration, which is one step short of a full blown legal proceedings. Mediation conciliation are non legal informal processes which have more designed for dispute avoidance than dispute resolution. Mediators advise the parties to assist in bringing about a mutually acceptable solution, and given the very nature of this process the mediators do not have the power to impose an outcome on disputing parties. Continuing further on this mediation and conciliation. The parties participate that is the stake holders who are having the dispute or a disagreement; they participate in this process of their own free will.

(Refer Slide Time: 05:07)



**Department of Civil Engineering
Indian Institute of Technology Kanpur**

Mediation and conciliation

- Voluntary - the parties participate with their own free will.
- Neutral third party assists the parties towards a settlement
- Non-binding unless an agreement is reached
- Private, confidential and conducted without prejudice to any legal proceedings

8

So, participation in the mediation process is purely voluntary. Neutral third parties assist the parties towards a settlement non binding unless an agreement is reached and of

course, then it becomes a legal document. Once as a result of mediation reconciliation a document is signed which decides or which leads down how a particular thing is to be handled, which is in addition to or supplements or clarifies the kind of original provisions in the contract. Then the modified document is of course legally binding. Till such time as this agreement is reached and signed the whole process mediation conciliation is non binding. Private confidential and conducted without prejudice to any legal proceedings, what does it mean? Without prejudice to any legal proceedings simply means that even though mediation conciliation is going on if a party decides to back out and seek legal recourse that option is always open. That is not the case when it comes to an arbitration or a legal proceeding, there it is much more difficult to just work out and seek alternative remedies.

(Refer Slide Time: 060:31)

Department of Civil Engineering
Indian Institute of Technology Kanpur

Details of mediation

Pre-mediation

- Agreeing to mediate and preparation
- Initial enquiry and engagement with parties
- Preliminary communications and preparations

Direct and indirect mediation

- Meeting the parties
- The parties' presentation
- Information gathering
- Facilitating negotiation
- Terminating mediation and recording agreements

Post-mediation

- Complying with the outcome

9

Now, let us try to see what are the details of this mediation processes as for as pre mediation is concerned it involves agreeing to mediate and preparation. Initial enquiry and engagement with the parties preliminary communications and preparations, then there is direct and indirect mediation which would involve that the mediators meet the parties the parties make their presentations. There could be information gathering there could be a facilitation of the negotiation process and finally, terminating mediation and recording of agreements. And in the post mediation stage there has to be a compliance of the outcome.

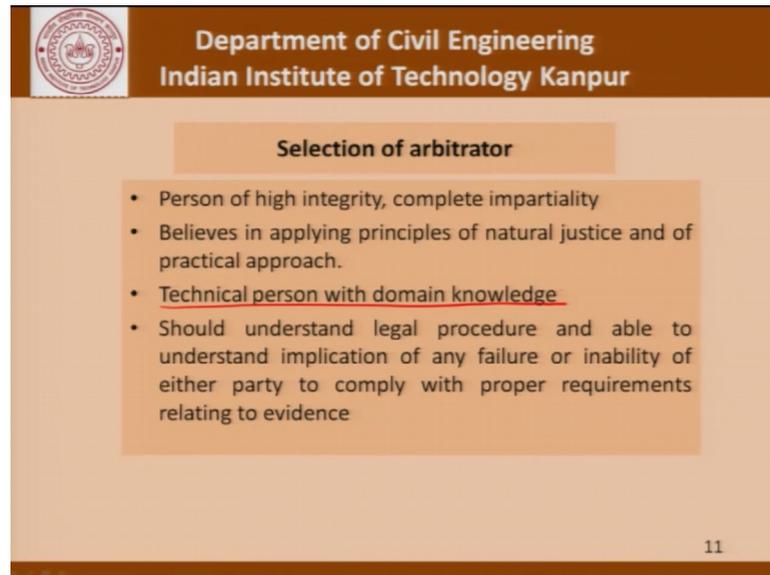
(Refer Slide Time: 07:10)



As for as the benefits of the mediation is concerned it is a faster and cheaper disposal of disputes. It is a more satisfactory outcome as for as the dispute resolution is concerned minimizes more disputes opens channels for communication, builds confidence in each other and preserves and enhances relationships between parties, and empowers them because they then believe in their abilities to be able to handle disputes on their own.

Now, having discussed a little bit about mediation conciliation, let us talk about the more serious process as for as dispute resolution is concerned and that is arbitration. Now what are this issues that are evolved when it comes to selecting an arbitrator?

(Refer Slide Time: 07:56)



Department of Civil Engineering
Indian Institute of Technology Kanpur

Selection of arbitrator

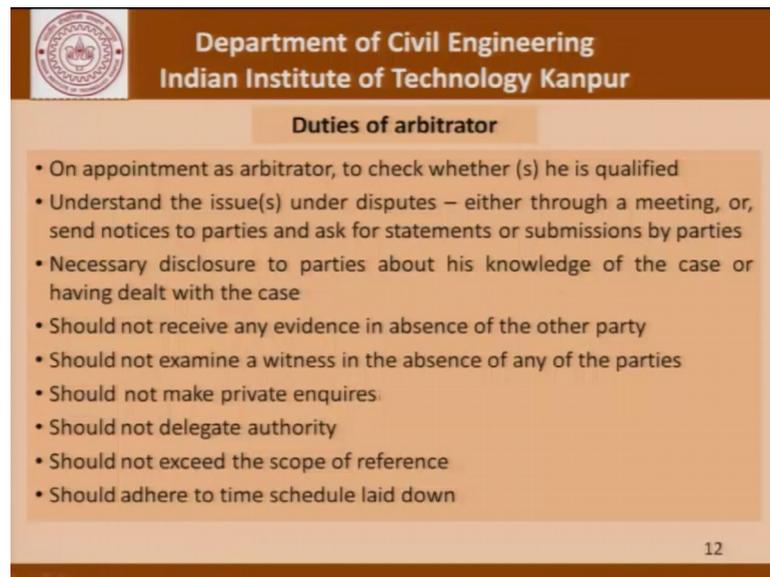
- Person of high integrity, complete impartiality
- Believes in applying principles of natural justice and of practical approach.
- Technical person with domain knowledge
- Should understand legal procedure and able to understand implication of any failure or inability of either party to comply with proper requirements relating to evidence

11

The person has to be of high integrity and complete impartiality. Believes in applying principles of natural justice and of practical approach. Technical person with domain knowledge; obviously, you are going for arbitration because the person should understand legal procedure and be able to understand the implications of any failures or inability of either party to comply with proper requirements relating to evidence.

So, the arbitrator basically has to be a technical person with domain knowledge, but having some understanding of the legal procedure. In terms of natural justice, in terms of evidence, in terms of being completely impartial and neutral.

(Refer Slide Time: 08:37)



Department of Civil Engineering
Indian Institute of Technology Kanpur

Duties of arbitrator

- On appointment as arbitrator, to check whether (s) he is qualified
- Understand the issue(s) under disputes – either through a meeting, or, send notices to parties and ask for statements or submissions by parties
- Necessary disclosure to parties about his knowledge of the case or having dealt with the case
- Should not receive any evidence in absence of the other party
- Should not examine a witness in the absence of any of the parties
- Should not make private enquires
- Should not delegate authority
- Should not exceed the scope of reference
- Should adhere to time schedule laid down

12

Now, as for as the duties of an arbitrator are concerned, on appointment the arbitrator should check whether he is qualified or not. Because there may be a situation where the arbitrator might feel, that for this particular dispute involving these particular technical items may be he is not the best person and that is something which the arbitrator has to get for himself or herself.

Understanding the issues under disputes either through a meeting or by sending notices to parties and asking for statements or submissions by the parties, that is how the arbitrator has to go about understanding the issues at hand. Necessary disclosures to parties about his knowledge of the case or having dealt with the case, should not receive any evidence in the absence of other party.

Now, we are coming to the situations or we coming to a the area where it is essentially a legal process. The arbitrator has to make sure that the evidence received by him is not in the absence of the other party. Please remember that if 2 parties a and b have gone into an arbitration. They have the right to know exactly what is going on as for as that arbitrate proceeding are concerned. The arbitrator cannot seek evidence or cannot receive evidence in the absence of one party or the other. Should not examine a witness in the absence of any of the parties. So, the arbitrator cannot play a private detective the witnesses have to be examined in the presence of the parties under dispute. Should not make private enquiries, that is what I said he cannot play a private detective the arbitrator

cannot go about trying to do some fact finding on his own no matter what the intention is.

So, the intentions being whatever it is the arbitrator has to make sure that whatever information gathered is only in the presence of these 2 parties and not acquired on his own. The arbitrator cannot delegate the authority. The arbitrator cannot say that such and such person or organization will act on his behalf and carry out certain investigations. The arbitrator has to make sure that all acts are carried out by him on his own. Should not exceed the scope of reference the arbitrator has to be very clear as to what terms of reference or the scope of reference for that particular work is. The arbitration or the award should neither go beyond that scope nor for short of that scope, and that is something which the arbitrator has to be very, very careful about. The terms of reference has to be clearly understood by him also the parties which has come to him for the dispute. They cannot raise issues beyond the terms of reference.

So, in a manner of speaking the terms of reference, define the limits of the field where the arbitration has to take place. Should adhere to the time schedule laid down. So, these are some of the duties for an arbitrator when it comes to carrying out an arbitration in the dispute in a construction project is concerned.

(Refer Slide Time: 11:36)

 Department of Civil Engineering
Indian Institute of Technology Kanpur

Conduct of hearings

Administer oath to parties and witnesses appearing.

Proceedings

1. The claimant makes an opening statement
2. The claimant calls and examines his witnesses, who may be cross-examined by the respondent.
3. If a witness is cross-examined, the claimant may re-examine him on any matter raised in cross-examination.

(Contd...)

13

Now, as far as the conduct of hearing is concerned it is more or less like a legal procedure, and the first thing is administer oath to parties and witnesses appearing. Then

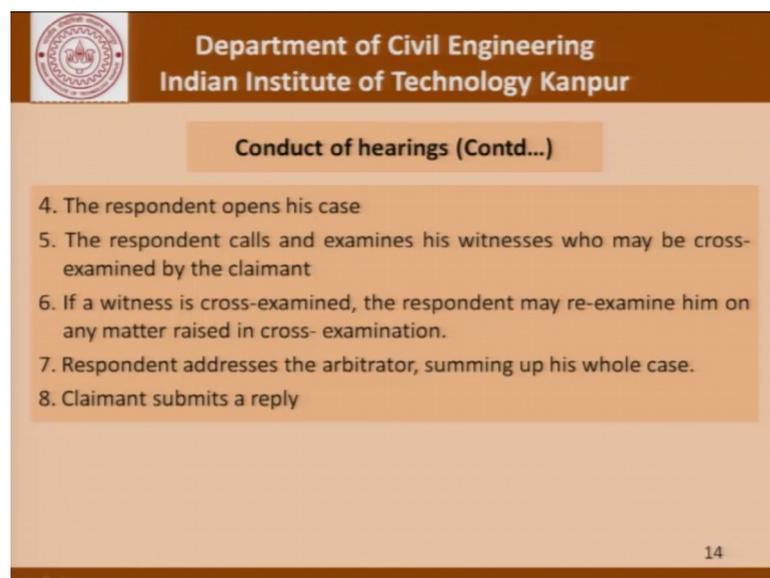
as for as proceedings are concerned claimant makes the opening statement, and then calls and examines his witnesses who may be cross examined by the respondent.

So, it is a usual judicial process the claimant makes the statement, an opening statement, presents the witnesses examines them and of course, respondent has the right to cross examine the witness presented by the claimant. If a witness is cross examined the claimant may re examine him or her on any matter raised in the cross examination. These are again slightly technical issues that once the claimant has examined the witness the respondent has the right to cross examine.

Now, on issues that have a reason on account of or during the cross examination, the claimant has the right to re examine the witness. The claimant cannot examine the witness once again except for issues which are raised during the cross examination. So, these are the kind of things which the arbitrator has to keep in mind and immediately blow the whistle like a referee does in a football match. So, arbitrator has to rule that whether or not a re examination is in order or whether a question being asked during the re examination is to be admitted. Because it may or may not be something which is arising out of the cross examination of the witness by the respondent.

So, these are the kind of things that arbitrator has to be clear in his mind from his legal background, conveying with the conduct of hearing.

(Refer Slide Time: 13:19)



 Department of Civil Engineering
Indian Institute of Technology Kanpur

Conduct of hearings (Contd...)

4. The respondent opens his case
5. The respondent calls and examines his witnesses who may be cross-examined by the claimant
6. If a witness is cross-examined, the respondent may re-examine him on any matter raised in cross-examination.
7. Respondent addresses the arbitrator, summing up his whole case.
8. Claimant submits a reply

14

Then it is the respondent turn to open his case and; obviously, then the respondent calls and examines his witnesses who may be cross examined by the claimant. And as was the case earlier if a witness is cross examined the respondent may re examine him on any matter raised during the cross examination. The respondent addresses the arbitrator summing up his whole case and finally, the claimant submits a reply. So, this basically summarizes the process of the conduct of the hearings as far as arbitration is concerned.

(Refer Slide Time: 13:59)

Department of Civil Engineering
Indian Institute of Technology Kanpur

Making of an award and subsequent proceedings

- Time limit
- Essentials of valid award
 - Should be in the direction of arbitration agreement
 - Can be reasoned or unreasoned
 - Should be in writing and signed
 - Must be certain and directed to all matters referred
 - Must be consistent and final
 - Should contain all directions necessary for its performance

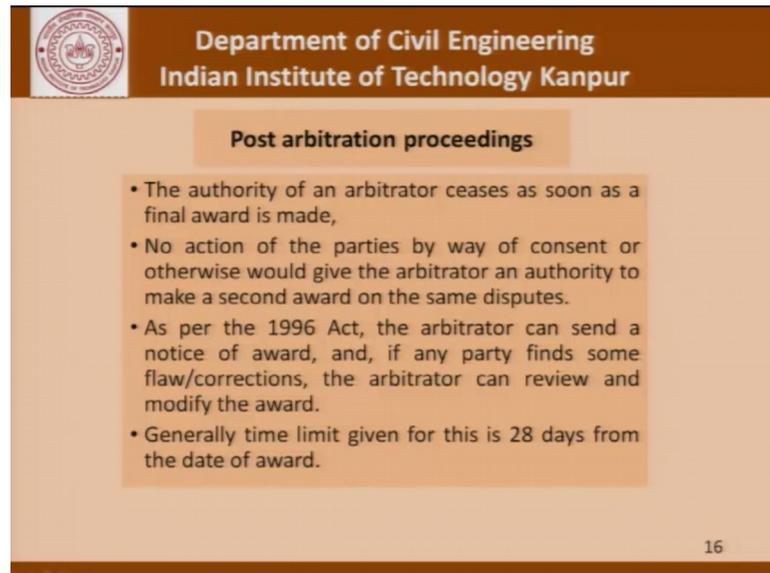
(Contd..) 15

As far as making the awards is concerned then we come to this stage of making an award and subsequent proceedings, where there is a time limit is involved and the essentials of a valid award would include should be in the direction of arbitration agreement. Can be reasoned or unreasoned the award does not necessarily have to specify completely reasons for a particular award the arbitrator has the freedom to just make the award without clearly explaining all the details that have gone in his mind making that particular award that would become an unreasoned award, should be in writing and signed it cannot be an oral award it cannot be something which is just dictated and typed without the arbitrator signing it. So, it has to be in writing and signed it must be certain and directed to all the matters referred.

So, what is we are talking about here is that must be certain it should clearly specify what exactly has to be done, and directed to all matters referred. So, once again we are referring to the terms of reference or the scope of reference. All the terms of reference

have to be clearly and unambiguously addressed and resolved without exceeding the brief neither falling short of it. Must be consistent and final and should contain all directions necessary for its performance. The arbitrator's award can also not be such that it does not state how it has to be completed. So, the arbitrator's award has to also have directions of performance.

(Refer Slide Time: 15:31)



**Department of Civil Engineering
Indian Institute of Technology Kanpur**

Post arbitration proceedings

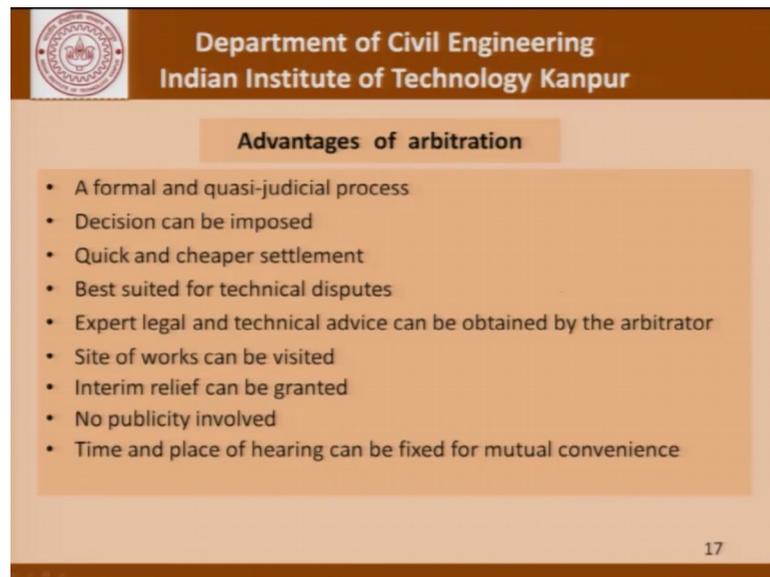
- The authority of an arbitrator ceases as soon as a final award is made,
- No action of the parties by way of consent or otherwise would give the arbitrator an authority to make a second award on the same disputes.
- As per the 1996 Act, the arbitrator can send a notice of award, and, if any party finds some flaw/corrections, the arbitrator can review and modify the award.
- Generally time limit given for this is 28 days from the date of award.

16

As for as the post arbitration proceedings are concerned the authority of an arbitrator ceases as soon as the final award is made. No action of the parties by way of consent or otherwise would give the arbitrator an authority to make a second award on the same dispute. So, the award having made once is irrevocable as for as a particular arbitration is concerned it really ceases.

Once that award has been made as a small corollary to this as for as the 1996 act is concerned and arbitrator can send what is called a notice of award and if any party finds some flaw or corrections the arbitrator can review and modify the award and modify the award. But that does not mean and that does not give the license to the arbitrator to review their award completely. Generally the time limit given for this is 28 days from the date of awards. So, basically what is laid down is that after the award has been made even under except for very exceptional circumstances, it is not prudent that the award be reviewed as for as that arbitrator is concerned.

(Refer Slide Time: 16:40)



Department of Civil Engineering
Indian Institute of Technology Kanpur

Advantages of arbitration

- A formal and quasi-judicial process
- Decision can be imposed
- Quick and cheaper settlement
- Best suited for technical disputes
- Expert legal and technical advice can be obtained by the arbitrator
- Site of works can be visited
- Interim relief can be granted
- No publicity involved
- Time and place of hearing can be fixed for mutual convenience

17

Now, advantages as far as arbitrage is concerned, is it is a formal quasi judicial process decisions can be imposed and are legally binding. It is a quick and a cheaper settlement best suited for technical disputes because the dispute is being heard and resolved by a person who is having domain knowledge. Expert legal and technical advice can be obtained by the arbitrator, the site of work can be visited interim relief can be granted. No publicity is involved and time and place of hearing can be fixed for mutual convenience.

So, there are lots of these advantages which are mentioned here which are not available as for as the full judicial process is concerned and that is where the advantages of arbitration come in handy and the award of course, can be appealed in a court of law. So, at the end of it party is not truly convinced that justice has been done and still feels aggrieved still go to the court of law.

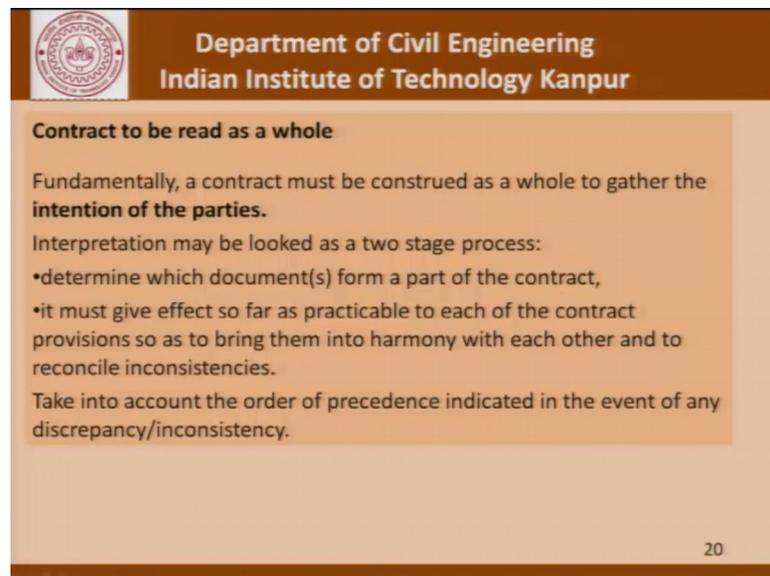
So, the arbitration process provides a very important. Safety valve to be able to resolve a matter or close a dispute outside the court, even though it is an out of court settlement it has a certain amount of legal scientity, having been carried out by an impartial arbitrator having heard who has gone into all the technical aspects of the dispute and made an award. So, with this we complete our discussion as for as dispute resolution is concerned and the rest of the discussion today will be focused on some of the guiding principles,

which are observed by an arbitrators and courts when resolving disputes in construction related contracts.

Let us talk of some rules for interpretation of provisions of a contract as for as words and phrases are concerned. Only the natural and ordinary meaning is taken and it is not expected that the court or the arbitrator will try to do any what is been called as verbal calisthenics to provide or to assign any a special meaning to a word or a phrase as for as the technical terms are concerned technical meanings as and when it is important will be used; local customs and usage will be respected. Reasonable and favorable meaning will be assigned to the terms that are used in the contract. When it comes to written words versus printed words the written words take procedures.

What is being said here is that sometimes it happens. That the contract is printed and at the last moment there is a typo graphical errors and it is not possible to re do the whole exercise at that time somebody writes the words on the contract and then it is the written word that is take into prevail.

(Refer Slide Time: 19:25)



The slide features a brown header with the IIT Kanpur logo on the left and the text 'Department of Civil Engineering Indian Institute of Technology Kanpur' on the right. The main content is on a light orange background with a dark orange border. It discusses the principle of reading a contract as a whole to understand the parties' intention and provides a two-stage process for interpretation.

Contract to be read as a whole

Fundamentally, a contract must be construed as a whole to gather the **intention of the parties**.

Interpretation may be looked as a two stage process:

- determine which document(s) form a part of the contract,
- it must give effect so far as practicable to each of the contract provisions so as to bring them into harmony with each other and to reconcile inconsistencies.

Take into account the order of precedence indicated in the event of any discrepancy/inconsistency.

20

Now, the contract has to be read as a whole, that is a very important principle when it comes to interpreting contracts and doing contract management. The contract has to be read as a whole.

Fundamentally a contract must be construed as a whole to gather the intention of the parties. So, it is very important that the courts or the arbitrators they try to understand what the intend of the parties was at the time when they entered in to that contract. Interpretation may be looked upon as a 2 stage process. In the first stage determine which documents form a part of the contract, and in the next stage it must give effect as for as practicable to each of the contract provisions. So, as to bring them in harmony with each other and reconcile inconsistencies.

So, the idea basically is that if there are different parts of a contract, if there are different documents that are part of the contract. And there are inconsistencies, then the effort is to direct energy to reconcile the differences in different parts in order that the original intension of the parties is respected. And take into account the order of precedence indicated in the event of any discrepancy or inconsistency, you would recall that when we are talking of CPWD guidelines.

We had clearly mentioned an order in which different documents or different parts of a contract are to be assigned. What is the hierarchy of the documents that will prevail when it comes to interpretation, should there be any discrepancy and if you look at that hierarchy closely you will realize that the topmost is the document which pertains most specifically to that particular project. And finally, at bottom of the hierarchy the documents which are more generic in nature, created by agencies which are not involved in the project directly and so on.

(Refer Slide Time: 21:21)

 **Department of Civil Engineering**
Indian Institute of Technology Kanpur

Words versus figures
– In the event of any discrepancy between words and figure appearing in a contract agreement, the words will prevail.

Deleted words versus alterations
– Deletions made before the contract is signed are not to be considered and alterations made after signing the contract are binding. The contract is therefore to be read as amended for the purpose of interpretation.

General versus specific provision in the contract
– If an agreement contains both general and special provisions relating to the same thing, special provision will prevail.

(contd..)

21

As for as words and figures are concerned the event of any discrepancy between words and figures appearing the contract document the words will prevail as for as deleted words versus alteration is concerned deletions made before the contract is signed are not be considered and alterations made after signing the contract are binding. The contract is therefore, to be read as amended for the purpose of interpretation. General versus specific provisions in the contract if an agreement contains both, and general and special provisions relating to the same thing a special provision will prevail and antecedents facts or correspondence.

(Refer Slide Time: 21:56)

 **Department of Civil Engineering**
Indian Institute of Technology Kanpur

Antecedents facts or correspondence
– Antecedent facts or correspondence before the conclusion of the contract are not to be considered to ascertain the meaning as court will not look as what parties did at the stage of negotiation.
– The documents forming part of contract shall only be looked into while construing the contracts except in case of real doubt about the contract meaning when court may look into correspondence prior to signing of contract .

Clerical errors
– In case of obvious clerical error in a contract, the corrected meaning should be used

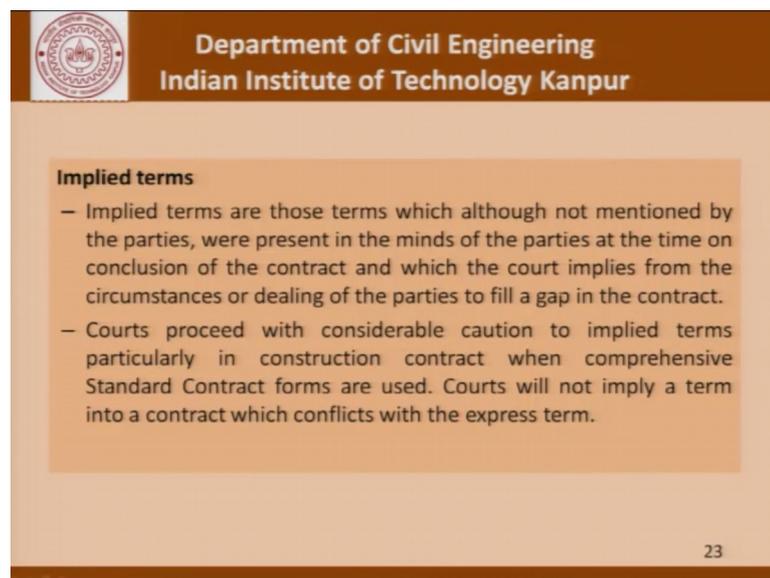
(contd..)

22

Now, what are antecedents facts antecedents facts or correspondence before the conclusion of the contract are not to be considered to ascertain the meaning as the court or arbitrator will not look into what the parties did at the stage of negotiation. What is being said here is that the parties often negotiate certain things before they come to the signing of the contract. Now those negotiations are not part of the contract, these is this is what is called antecedents facts or correspondence and of course, there will be a record as to what the kind of correspondence that happened before the contract was signed But that correspondence is not considered part of the contract.

The documents forming the part of the contract shall only be looked into while construing the contracts except in case of real doubt about the contract meaning when the court or the arbitrator may look into the correspondence prior to the signing of the contract. Only to the extent that their intention is to determine the original intent of the parties.

(Refer Slide Time: 23:17)



The slide features a brown header with the IIT Kanpur logo on the left and the text "Department of Civil Engineering Indian Institute of Technology Kanpur" on the right. The main content is in a light orange box with the title "Implied terms" and two bullet points. The slide number "23" is in the bottom right corner.

**Department of Civil Engineering
Indian Institute of Technology Kanpur**

Implied terms

- Implied terms are those terms which although not mentioned by the parties, were present in the minds of the parties at the time on conclusion of the contract and which the court implies from the circumstances or dealing of the parties to fill a gap in the contract.
- Courts proceed with considerable caution to implied terms particularly in construction contract when comprehensive Standard Contract forms are used. Courts will not imply a term into a contract which conflicts with the express term.

23

As for as clerical error of course, are concerned in case of obvious clerical error in a contract; obviously, the corrected meaning should be used and that leave an interpretation is available to the court or the arbitrator. As for as implied terms are concerned we talked about implied in the express contracts, now we are talking about the implied term implied terms are those terms which although not mentioned by the parties were present in the minds of the parties at the time of conclusion of the contract and

which the court or the arbitrator implies from the circumstances or dealing with the parties to fill in the gap in a contract.

Now, courts usually proceed with considerable caution to implied terms particularly in construction contracts. When comprehensive standard contract forms are used courts will not imply a term into a contract which conflicts with the express term. So, basically what is being said is that the courts or the arbitrators should look at and do look only at the expressed terms which are used. Implied terms which are not used and not expressly stated this part of the contract are usually not accounted for in arriving at a decision. As far as inconsistency and repugnant clauses are concerned if different parts of a contract in respect of particular items at inconsistent effect is to be given to that part which is calculated to carry into effect real intention of the parties and the part which defeat that intention is to be rejected.

So, basically the bottom line is that the court and the arbitration must keep in mind the original intent. And whatever establishes the original intent must be effected when provisions in 2 classes in respect to a particular item are totally repugnant to each other that is they are irreconcilable the clause that impedes the real intention of the parties should be rejected. That is what I stated earlier when I said that it is the original intent of the parties which has to be always the top guiding principle as far as interpretation of the contract is concerned.

Alternate methods to perform a promise of course, there could be situations where there are alternative methods of performing a task. We remember that? A contract basically involves a clearly defined task the fact that one party agrees to perform that task, and the other party agrees to make a certain amount of payment in return for that performance. Now if the method of performing the task is not specified then the option lies on the party who is to perform the promise in question. The person who is not performing the task cannot laid down How the task should be performed.

Because at the end of it is the party whose performing the task on whom the final choice of the method should rest, except for the fact that that method should be not unsafe it is not possible very often there is a provision in the contract which will say that even though the client leaves the option of deciding the methods on the contractor. The contractor must submit an SOP or exact detailed procedure of how the steps will be or

what the steps will be when performing a particular task. The client then carries out and evaluation of that SOP from points of view of safety, and that is where this clause becomes very, very relevant.

(Refer Slide Time:26:53)

The slide features a brown header with the IIT Kanpur logo on the left and the text "Department of Civil Engineering Indian Institute of Technology Kanpur" on the right. The main content is on a light orange background with two sections: "Alternate methods to perform promise" and "Benefits of doubts against the drafter of contract". The first section contains a bullet point stating that if alternative methods exist and a specific one is not mentioned, the option lies with the party performing the task. The second section contains two bullet points: one stating that in case of inconsistent contract provisions, interpretation favors the party who did not draft the contract, and another stating that the drafter is presumed to have more knowledge.

**Department of Civil Engineering
Indian Institute of Technology Kanpur**

Alternate methods to perform promise

- If there are alternative methods of performing a task, and a specific method is not mentioned, the option lies on the party who is to perform the promise in question.

Benefits of doubts against the drafter of contract

- When there is inconsistency in the meanings of the provisions of the contract, one interpretation gives favour to one party and loss to the other party and the other interpretation has an opposite result, the interpretation shall be made in favour of the party who has not drafted but only accepted the contract.
- It is argued in this case that the drafter has the full/more knowledge over the party who accepts it.

25

Even though the choice of deciding the method is left to the party which is actually performing the task, the party not performing the task reserve the right to review the procedure keeping the interests of safety in mind.

So, these are some of the contradicting situations and considerations that operate as for as the contractor are concerned as for as clients are concerned, which could lead to disputes and we are talking about how these disputes are to be resolved. So, there is a provision here we are talking about where it says that the choice of the method of performing the task is left to the person who is performing the task, but that does not mean that the person has the right to indulge in an unsafe procedure.

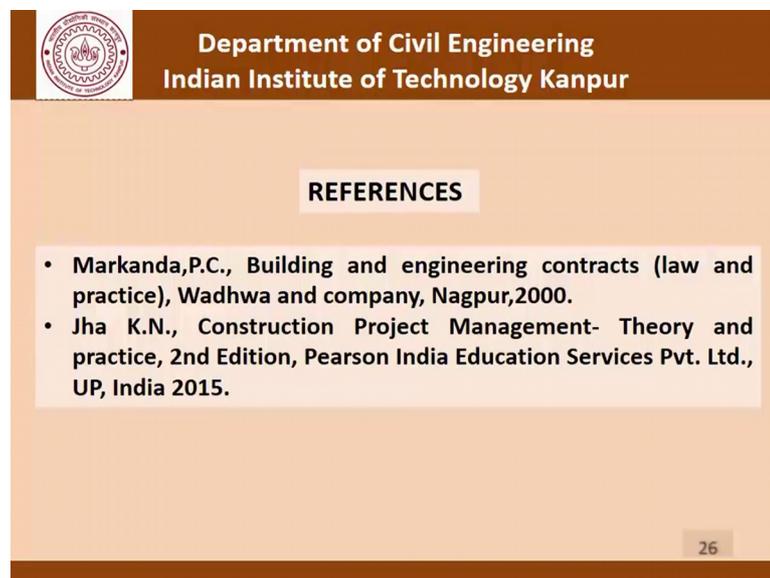
Then there is a very interesting provision here benefit of doubts against the drafter of the contract. Even though in principle when a contract signed it can be argued both the parties who are signing the contract or all the parties were signing the contract, have read that document completely, have understood it completely and are committing themselves to abide by the provisions of that particular contract. But when there is a inconsistency in the meanings of the provisions of the contract in a manner that one interpretation gives favour to one party and loss to the other. And the other interpretation has the opposite

result The interpretation shall be made in favour of the party who has not drafted, but only accepted the contract.

So, what we are saying here is that even though the 2 parties have equally read the contract, but in case of a difficulty it is recognized that both the parties have not played an equal role as for as drafting the contract is concerned. So, once the contract has been drafted that the benefit of doubt if that has to be granted will be granted to the party which is not drafted the contract and has only accepted. It is argued in this case that the drafter has the full or more knowledge over the party who accepts the contract.

So, with this we come to an end of our discussion today which related primarily to informal methods of dispute resolution we talked about mediation and conciliation then we talked about what an arbitrator has to do and how he works the proceedings of arbitration, and then we looked at some very interesting provisions on how the interpretations are made by courts and arbitrators as for as dispute resolutions and contracts concerned.

(Refer Slide Time: 29:24)



Department of Civil Engineering
Indian Institute of Technology Kanpur

REFERENCES

- Markanda, P.C., Building and engineering contracts (law and practice), Wadhwa and company, Nagpur, 2000.
- Jha K.N., Construction Project Management- Theory and practice, 2nd Edition, Pearson India Education Services Pvt. Ltd., UP, India 2015.

26

And this slide here will give you some ideas how to go about doing some further reading should you want to understand the subject a little better. And I look forward to seeing you once again in a subsequent discussion.

Thank you.