

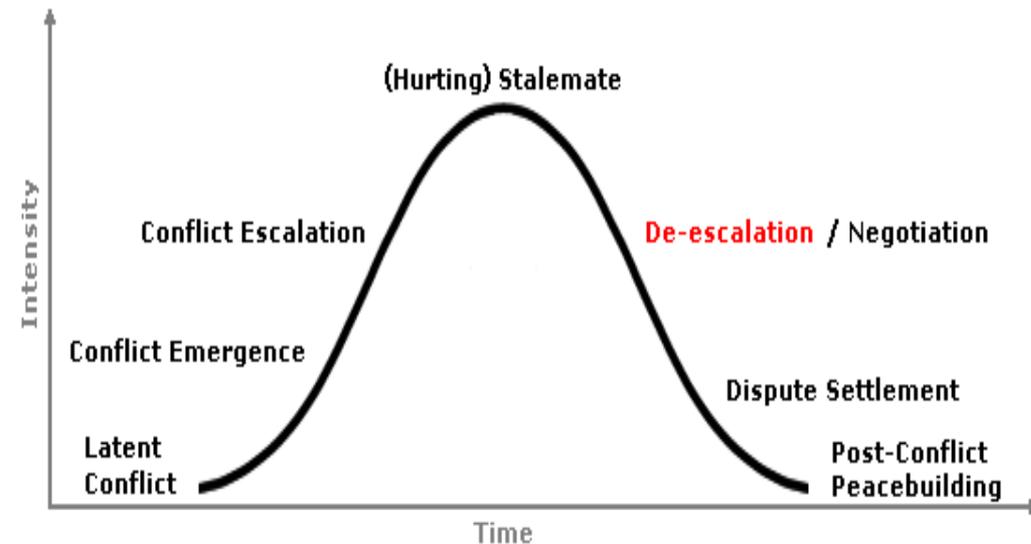
Engineering Professional Practice (CVL 440)

Conflict and Dispute Management

(Chapter 5; 2 hours)

Prof. Dr. Hari Krishna Shrestha

August 2017



Conflict and Dispute Management

- 5.1 Levels and sources of conflict
- 5.2 Conflict resolution methods: avoidance, diffusion, containment, confrontation, conciliation, mediation, arbitration, and litigation
- 5.3 Dispute resolution methods: adjudication and arbitration



Conflict

- Conflict results when people have different (real or perceived) value or approach on particular issue(s).
- **Organizational Conflict:** *“Organizational Conflict is a state of discord caused by the actual or perceived opposition of needs, values and interests between people working together.”*

Three approaches to organizational conflict

- **Traditional approach** (1930-40): Conflict is opposite of cooperation, and is inherently bad, negative and harmful for smooth functioning and progress of society, organization or a project. Conflict is equated to dysfunction and destructive, and must be avoided. It results from poor communication, disagreement, lack of trust, and low management skill.
- **Human Relations approach** (1950-70): Conflict is inevitable and can be beneficial, if managed properly. It is not inherently bad.
- **Interactionist approach:** Conflict makes an organization dynamic, and helps in finding best solution to problems. On-going manageable level of conflict should be encouraged as it prevents organization from being static. So conflict is good.

5.1 Levels and sources of conflict

Levels of Conflict

- **Intrapersonal conflict:** conflict within self due to differences in goal, role, and personal values
- **Interpersonal conflict:** between two or more persons; can be due to differences in goal, role, values, culture, communication gap
- **Intergroup conflict:** between two or more groups of people
- **Inter-organizational conflict:** between two or more organizations
- **International conflict:** between two or more nations



5.1 Levels and sources of conflict

Sources of Conflict in an organization (or a project)

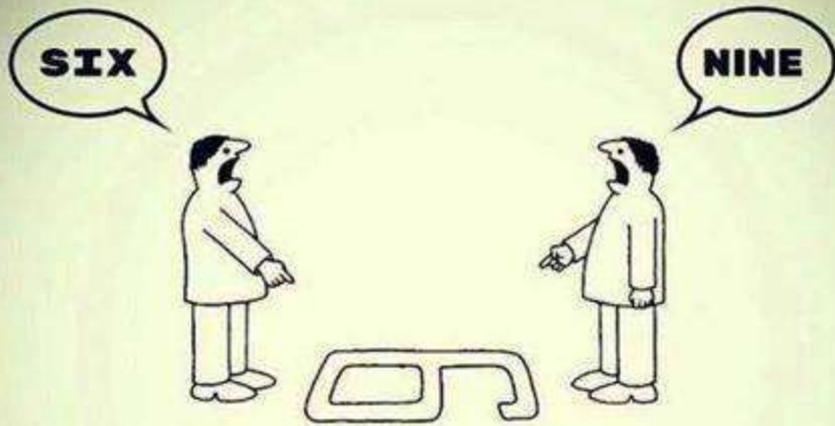
- **Personal differences/Personality clash:** When the ideas, values, culture and customs of a person (or persons) are incompatible with other persons of an organization.
- **Goal and role incompatibility:** When the ideas, values, culture and customs of a person (or persons) are incompatible with the goal of an organization or assigned role of the person in the organization.
- **Organizational climate and change:** When the work environment and rules of an organization are unpredictable, and when the rules or managers or owner of the organization suddenly changes.
- **Gender and other social differences:** When the work environment and rules are designed to favor employees from a particular socio-cultural background or particular gender.
- **Availability and access to resources:** When the availability of resources becomes too limited and/or unevenly distributed. When access to resources is uneven.
- **Communication gap:** When there is communication gap between organization and its employees.



5.2 Conflict resolution methods: avoidance, diffusion, containment, confrontation

- **Avoidance:** avoid conflict, ignore conflict, “time will heal” approach; in this method the management will try to create a situation where conflict does not occur, for example by hiring workers from similar socio-cultural background. If conflict occurs, the management will wait for the situation to calm down, rather than taking any proactive situation.
- **Diffusion:** distraction and defuse into multiple sectors; bring in “other” issues so that the main reason from the conflict becomes less important or one of the many issues; bring in other stakeholders..
- **Containment:** conflict contained within certain people, and resolved through discussion and bargaining, in closed meetings, in the hope to resolving the conflict before it goes out of control or before it expands.
- **Confrontation:** conflict brought in front of all concerned, conflict resolution through open dialogue, face-to-face meeting, open bargaining, and resorting to legal process, if needed.





Just because you are
does not mean, I am
You just haven't seen
from my side



5.3 Dispute resolution methods: conciliation, mediation, adjudication, arbitration, and litigation

- **Conciliation:** Mutually agreed terms and conditions, “give and take” approach, without direct involvement of outsiders (mediator), even though the mediator assists in bringing the parties together.
- **Mediation:** similar to conciliation, but with direct involvement of outsiders (mediator). The mediator facilitates, and intervenes, if needed, in conflict resolution process (as per Mediation Act 2068)
- **Arbitration:** Resolution through certified licensed professional arbitrators, using the clauses of acts and regulations, after thoroughly investigating the issues of conflict. The arbitrators are normally selected, by mutual consent, from panel of experts.
- **Litigation:** Resolution through court, as per prevailing laws, acts, rules, regulations, and legal precedents of a country.



5.3 Dispute resolution methods: adjudication and arbitration

Disputes are inevitable in construction projects and in engineering professional works. Dispute resolution procedures are normally mentioned in the conditions of contract. The Public Procurement Act 2063 (PPA 2063, Chapter 7, Clause 58) and Public Procurement Rules 2064 (PPR 2064, Chapter 12) have provisions for dispute resolution.

If the parties in dispute cannot resolve the dispute through mutual consensus (amicable settlement), then, as per Clause 129 of PPR 2064,

- For works of value up to Rs. 100 million, disputes can be settled by sole adjudicator (निर्णयकर्ता).
- For works of value above Rs. 100 million, disputes shall be settled by a Dispute Resolution Board (DRB) consisting of three members (one from private party, one from public entity and one agreeable to both, Clause 130-2).
- If the parties cannot settle dispute through adjudicator or DRB, then the dispute can be resolved through arbitration (मध्यस्थकर्ता) or litigation (court), PPR, Clause 135.
- The adjudicator is a related technical expert with at least 5 years of experience.
- Remuneration of the adjudicator will be borne equally by the private party and public entity.

5.3 Dispute resolution methods: adjudication and arbitration

Adjudication:

- The adjudication is “a quick and relatively inexpensive way of resolving a dispute, whereby an impartial third party adjudicator decides the issues between the parties”.
- The following are the characteristics of adjudication.
 - It is a mechanism of dispute resolution.
 - An independent third party, called adjudicator, awards the decision
 - Quicker and inexpensive mechanism of dispute resolution, compared to arbitration and litigation, normally taking less than 30 days after submission all relevant documents.
- The Public Works Directive (PPD) and the Public Procurement Act (PPA 2063, clause 58) have provisions for dispute resolution through adjudication.



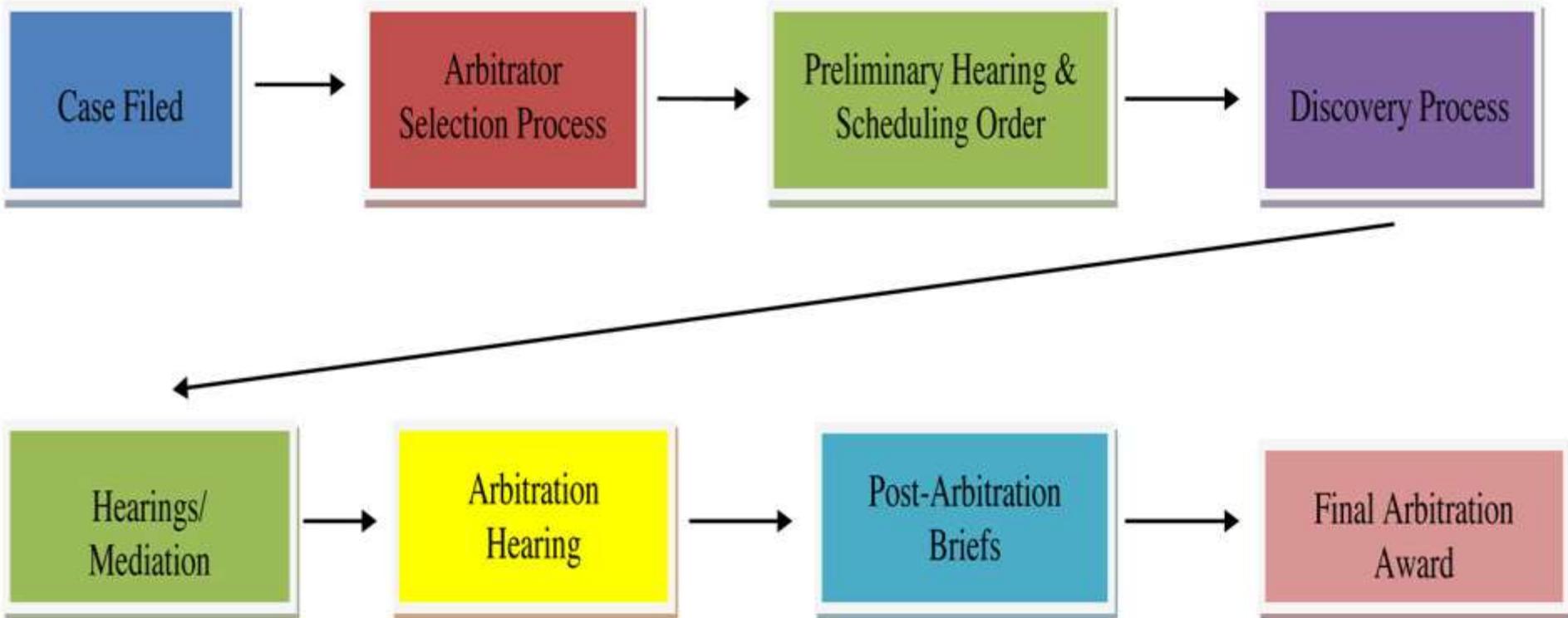
5.3 Dispute resolution methods: adjudication and arbitration

Arbitration

- The arbitration is a formal mechanism of dispute resolution conducted outside a court, as per Arbitration Act 1999. The following are the advantages of arbitration over litigation.
- It is a private alternative to formal court procedure: voluntary in nature
- The arbitrators are technical experts; can result in creative solutions
- Faster conclusion, within 120 days after submission of documents (Clause 24)
- Less expensive
- No public hearing, so low publicity and less stress (which is normally preferred by the parties)
- Less confrontational and formal, hence more convenient to the parties of dispute
- Can appeal against decision in Appellate Court within 15 days (Clause 21-2)
- The PPA 2063 has recognized arbitration as a means of dispute resolution. Arbitration Act 1999 (Clause 17) governs the arbitration procedure in Nepal. The Nepal Arbitration Council 1991 has been providing arbitration services in Nepal. However, in Nepal, most of the disputes go to court, or settled out of court through mutual consent, even after arbitration, by ignoring the arbitrators' decisions.



ARBITRATION PROCESS



Conflict versus dispute

Conflict	Dispute
Long term serious disagreement, non-specific issues	Short term disagreement, over specific issues, can be resolved
Non-negotiable issues	Negotiable issues
Involves principle, values, ego, belief, interest	Involves amount, money
Conflict does not turn into dispute, unless intervened.	Disputes, if unsettled, can convert into conflict
Each side is fundamentally opposed to the success of the other and will not compromise their own values at the risk of allowing those they despise to achieve even the slightest victory (Burton, 1990)	specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another; Win-win scenario can be compromised.



Self Test

- Define conflict and explain the sources (causes) of conflict.
- Discuss different levels of conflict.
- Discuss different methods of conflict resolution.
- Differentiate between conflict and dispute.
- Discuss dispute resolution methods. Which method is better: adjudication or arbitration?
- What are the major differences between mediation and adjudication?
- Which method of conflict resolution is preferred by private parties, and why?
- What are the major sources of dispute in an infrastructure development related construction project in (a) a remote area of Nepal, and (b) in urban areas?
- Discuss the potential sources of conflict in (a) a high dam hydropower project, (b) fast tract highway, (c) broad gauge railway through mid-hills of Nepal, (d) international airport in Nijgadh, (e) multi-purpose water resources development project, (f) land pooling project for planned city development