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Analyzing Recurring EPC Contract Clauses Leading to Court Cases in NHAI: Insights from High Court Judgments

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Abstract: ***This study provides a thorough examination of frequently occurring Engineering, Procurement, and Construction (EPC) contract provisions that have resulted in legal disputes under the purview of the National Highways Authority of India (NHAI). This study intends to identify and examine the specific contractual clauses that have been the focus of legal issues in NHAI projects by drawing conclusions from a thorough assessment of High Court judgements. The study clarifies the underlying factors and ramifications of these conflicts, providing insightful viewpoints for those involved in the infrastructure and construction industries. This paper provides a platform for improving and strengthening EPC contracts to reduce potential conflicts and improve project execution efficiency by looking at the legal precedents.30 judgment from 2012 to 2021 were collected from Highcourt and identified recurring EPC contract clauses leading to court cases.***
Keywords: judgement, EPC, recurring, litigation, NHAI, Contract

I. INTRODUCTION

The National Highways Authority of India (NHAI) is in charge of a vast highway network that is essential for connectivity and economic growth, placing it at the forefront of India's infrastructure development. Engineering, Procurement, and Construction (EPC) contracts, which outline the duties, privileges, and liabilities of project stakeholders, are essential to the implementation of NHAI projects. Although these contracts were carefully drafted and negotiated, disagreements over their interpretation and application continue, frequently demanding settlement through the judicial system.

This study paper launches a thorough investigation into the recurrent EPC contract provisions that have served as the key issues in legal disputes involving NHAI projects. This study aims to identify the precise contractual clauses that have historically led to legal disputes by utilising the insights gained from a thorough analysis of High Court judgements. This research seeks to shed light on the fundamental causes and implications of these recurrent disputes through a thorough analysis of those disputes, offering stakeholders in the construction and infrastructure sectors crucial views on minimising possible conflicts.

The significant monetary investments and national importance linked to NHAI initiatives serve to highlight the importance of this inquiry. EPC contract disputes not only cause delays and cost overruns, but they also have wider ramifications for the country's economic and infrastructure development. This research aims to provide a basic understanding that can guide more robust contract formulation, negotiation, and dispute resolution practises by analysing the subtleties of these disagreements.

This study paper seeks to serve as a useful resource for all parties involved in NHAI projects, from contractors and legal counsel to regulatory authorities and policymakers, by conducting this thorough analysis. This research aims to promote a culture of more precise and effective contract management by identifying the common contract provisions that have resulted in legal conflicts. This will ultimately help to speed up and ensure the smooth execution of NHAI projects.

II. OBJECTIVE OF THE STUDY

To meticulously scrutinize High Court judgments related to NHAI projects and extract the specific contractual provisions that have consistently led to legal conflicts.

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III. LITERATURE SURVEY

There has been a great deal of academic and professional discussion on the structure of Engineering, Procurement, and Construction (EPC) contracts in the construction sector. These contracts fall under the supervision of the National Highways Authority of India (NHAI), and they have a significant impact on how important infrastructure projects are executed and delivered. For the purpose of analysing recurrent EPC contract provisions giving rise to legal disputes in NHAI projects, the following literature study offers an overview of significant issues and research areas:

Construction law and EPC contracts: The subtleties of EPC contracts have been thoroughly investigated by researchers, who have highlighted their importance in the construction sector (Meng, 2019; Kumaraswamy et al., 2019). These studies explore the legal ramifications, risk distribution, and contractual frameworks of EPC projects. Various parts of construction law, such as contract interpretation, disputes, and resolutions, have been studied by legal experts (Furst, 2018; Pollard et al., 2019). These writings offer fundamental understanding of the legal principles behind EPC contracts. There are three primary stages to a conflict or dispute before it becomes a legal issue for construction projects. The following are these phases: Stages 1 and 2 of the claim process are claim creation, claim rejection, and the failure of a peaceful resolution (Stage 3). Cost overruns or delays in particular construction project components are what give rise to a claim that eventually results in litigation. (Jagannathan and Delhi, 2020). Different opinions on the validity and/or value of the claim may give rise to disputes. Improvements in claims management and the facilitation of more effective and efficient dispute minimization tactics can be achieved by fine-tuning management emphasis to anticipate and prevent, or provide for, typical problem areas.(M.Kumarswamy, 1997) Practices for concurrent conflict settlement vary across India. Dominant Cause, Apportionment, and other approaches that are widely used around the world have been used in India, although they are still in their infancy and are not yet widely used. (Munvar, Mengistu and Mahesh, 2020)

IV. RESEARCH METHODOLOGIES

The approach was used in accordance with Figure No. 1.

First data will be extracted from high court website. All high court website have facility to download total judgement. For extracting the data where NHAI will be petitioner or respondent both judgement will be download. Considered only EPC contract judgement for analyzing. Meticulous scrutinize the judgement and search out the EPC contract clauses which leads to litigation, dispute which leads to court case. Analyze the most recurring contract clauses based on frequency.

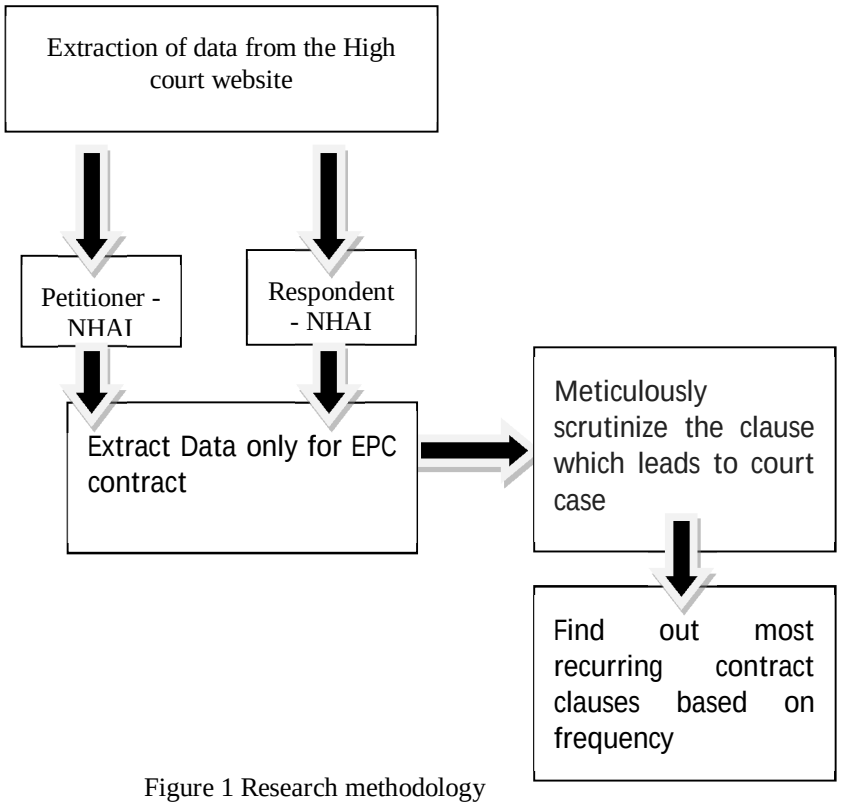


Figure 1 Research methodology

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V. DATA COLLECTION

Data was collected as per Fig. 1 of research methodology. The summary of data would be available in table 1. The data were collected from Year 2012 to 2021 with High court.

Table -1 Summary of Court case

Year	Case Number	Court	EPC cont. clause
2021	W.P.(C) 3947/2021	Delhi HC	3
2021	W.P.(C) 4616/2021	Delhi HC	3
2021	WP(C)/4494/2021	Gauhati HC	23
2021	No.13968 of 2021	Madras HC	19
2021	W.P.(C) 8901/2021 & CM APPL. 27659/2021	Delhi HC	10
2021	W.P.(C) 1853/2021, CM APPL. 5361/2021 & CM APPL. 5362/2021	Delhi HC	3
2021	W.P.(C) 3448/2021	Delhi HC	3
2020	ARB.P. 320/2020	Delhi HC	26
2020	W.P.(C) 3743/2020	Delhi HC	3
2020	ARB.P. 288/2020& I.A. 11239/2020	Delhi HC	26
2020	W.P.(C) 5943/2020 and CM APPL. 21472/2020, 21951/2020	Delhi HC	3
2020	ARB. P. 208/2020	Delhi HC	26
2020	ARB.P. 470/2020	Delhi HC	26
2020	FAO(OS) (COMM) 66/2020 & CMs No.11332/2020	Delhi HC	7
2020	ARB.P. 288/2020 & I.A. 11239/2020	Delhi HC	4
2019	GAHC010141952019	Gauhati HC	23
2019	CS (OS) 215/2019	Delhi HC	19
2019	W.P.(C) 8312/2019	Delhi HC	3
2018	O.M.P. (COMM) 97/2018 & I.A. Nos. 2879/2018 & 2880/2018	Delhi HC	7
2018	ARB.P. 278/2018	Delhi HC	26
2018	ARB.P. 231/2018	Delhi HC	26
2018	O.M.P.(I) (COMM.) 90/2018	Delhi HC	19
2017	OMP (I) (COMM.) 102/2017	Delhi HC	23
2017	O.M.P. (COMM) 459/2017 & IA No.15509/2017	Delhi HC	26
2016	O.M.P (Comm.) 176/2016	Delhi HC	19
2016	WP(C) 10690/2016	Delhi HC	7
2015	W.P.(C) 443/2015	Delhi HC	7
2015	O.M.P.--391/2015	Delhi HC	26
2012	O.M.P NO. 1234 /2012	Delhi HC	8,19

VI. RESULT AND DISCUSSION

From the Table number 2 it would be notified that there are lots of recurring EPC contract clauses which have high risk of court cases in NHAI from high court judgment. The data was sorted as per frequency of clauses for court cases. Data were sorted out based on ranking from highest frequency to lowest frequency. Highest frequency would be given as 1 and like wise.

Table -2 Summary of more impacted clause

Clause Number	Clauses for	No of repetition	Frequency	Ranking
26	DISPUTE RESOLUTION	8	26.67	1
3	OBLIGATIONS OF THE CONTRACTOR	7	23.33	2
19	PAYMENTS	5	16.67	3
7	PERFORMANCE SECURITY	4	13.33	4
23	TERMINATION	3	10.00	5
4	OBLIGATIONS OF THE AUTHORITY	1	3.33	6
8	RIGHT OF WAY	1	3.33	6
10	DESIGN AND CONSTRUCTION OF THE PROJECT HIGHWAY	1	3.33	6

VII. CONCLUSIONS

As stated earlier that this research is referred to as recurring EPC contract clauses which have high risk of court cases in NHAI from high court judgment. The 30 judgments were extracted from the high court website. The finding indicates that there are several critical (high risk) contract clauses in EPC contracts for court case “Dispute resolution” is the first recurring EPC contract clause, according to Table No. 2 others are Obligation of the contractor, Payments, Performance security, Termination, Obligations of the authority, Right of way, Design and construction of the project highway. The above clauses has to be modified based on the Indian Contract Act, FIDIC and other contract document so court cases will be minimize.

VIII. FUTURE SCOPES

The said Analysis will be done forn the different contractual models on the national highway.

IX. CONFLICT OF INTEREST

The corresponding author declares there aren't any competing interests on behalf of the other writers.

X. LIMITATIONS

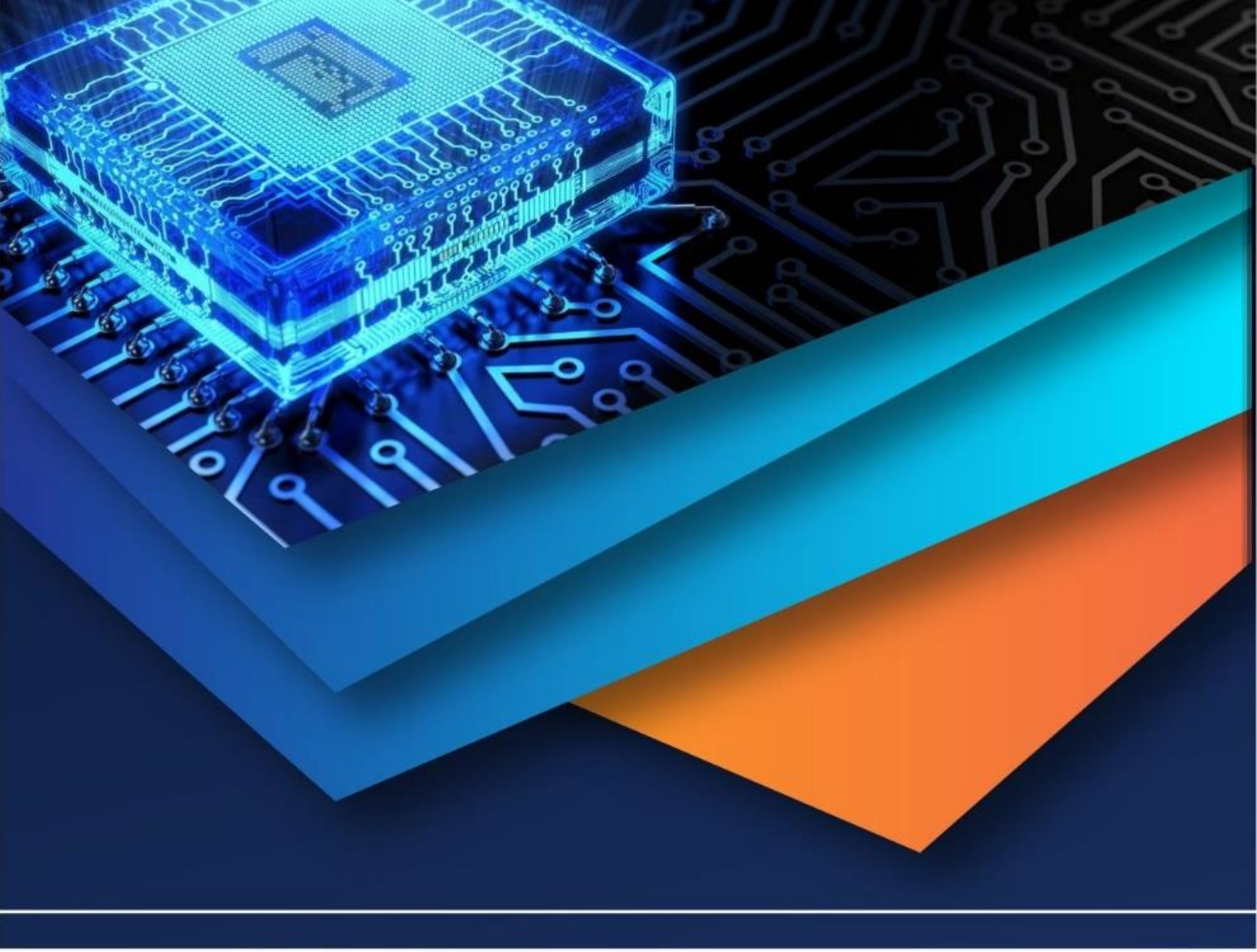
This study has two limitations it has considered only the EPC contract of national highways and it focuses only on judgement.

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