A STUDY ON "MINI TRIAL" AS AN ALTERNATIVE DISPUTE RESOLUTION METHOD IN SRI LANKAN CONSTRUCTION INDUSTRY

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ABSTRACT

A Study on Mini Trial as an Alternative Dispute Resolution Method in Sri Lankan Construction Industry

Dispute resolution in the Sri Lankan construction industry is becoming more prominent as every dispute has its unique qualities. Resolving such disputes during the current construction industry is a challenge without an accurately structured method that addresses all kinds of dispute resolution requirements, and it must be a tailored fit for every party involved. Due to a variety of shortcomings in litigation methods, disputants seek for alternative dispute resolution (ADR) ways. Although many desirable features of ADR are available, they also have issues, such as drawbacks and pitfalls, apart from their respective advantages. To address the pitfalls and disadvantages of various ADR methods, many researchers have suggested Mini Trial as a successful ADR process to practice, although rarely seen in Sri Lankan practice.

This study aims to investigate the applicability of "Mini Trial" as a suitable alternative dispute resolution method for Sri Lankan Construction Industry to make the alternative dispute resolution a more effective and viable system. Initially, a literature review on the concepts of ADR methods was conducted. Semi-structured interviews were held with veteran construction professionals, following open-ended and closed-ended questions as the primary data collection technique in pursuing the research aim. Manual content analysis and descriptive statistics were employed to analyse the open-ended and closed-ended questionnaire, respectively.

Research findings revealed that the Mini Trial method suits a vastly different structured range of disputes, both in width and depth. As a principle, a mini trial carries a pre-scheduled time limit to completely settle the dispute. The decision on dates, venue, and duration is entirely up to the parties involved in the process. Such flexibility encourages parties to resolve their dispute through a mini trial in a more efficient approach. The study further revealed that the involvement of authorised persons from every party involved in the process shows the strength and practicality towards decision-making without experiencing any revocations. A mini trial allows hearing the notion of the opposition party in their point of view, which strengthens the understanding of the dispute rather than communicating to understand the same through someone else. This unique quality provides a mini trial with an added intensity when resolving the technically disputed matters compared to other ADR methods. This bears evidence that the mini trial has a much more reliable and a solid foundation as an alternative dispute resolution method. Reasoning to the same, it has been proved that mini trial is more suitable as an alternative dispute resolution method that can be adapted to the Sri Lankan construction industry to make current ADR practice a more sustainable and durable system. More research work towards problematic areas in dispute resolution and appropriate adjustments for mini trial, when adapting to the Sri Lankan construction industry, will provide a firm background to make a more convenient and efficient Sri Lankan ADR system in the future.

Keywords: *Alternative Dispute Resolution, Mini Trial, Sri Lankan Construction Industry*

DEDICATION

This research dissertation is

Dedicated to

My Supervisor, my parents, sister and brother-in-law

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ABBREVIATION

Abbreviation	Description
ADR	Alternative Dispute Resolution
CI	Construction Industry
DR	Dispute Resolution
MT	Mini Trial
SL	Sri Lanka
TWMA	Total Weighted Mean Average

1.0 INTRODUCTION

1.1 Research Background

Positive changes in policies especially encouraged many private sector investors to facilitate different types of development projects in Sri Lanka (Weddikkara & Devapriya, 2000). Researchers delineated that high raw material prices, lack of funds availability, inadequate supply of high-quality materials, and the shortage of skilled workers were the main difficulties faced by the industry (Rameezdeen, 2006). Above all, the most significant problem was frequent changes in regulations, especially in the development control and approval process, which are directly related to the construction industry (ICRA Lanka & IMaCS, 2011). Moreover, Weddikkara and Devapriya (2000) emphasised that various types of disputes started arising related to the process due to the complexity of activities incurred.

The professionals in the construction industry have identified that disputes may arise at any point during the construction process. As mentioned by Gunasena (2010), construction disputes have the potential to arise at any stage of the construction process. As an example, conflicts can arise widely on variations, extensions of time, late payments, project delaying issues, disruption, and prolonged on claims and issues related to the termination of contracts. It may also suffer from inadequacies in project formulation and implementation, leading to time and cost overruns, and affect the viability of the projects. In addition, improper organisation due to lack of coordination, communication, and effective management result in disputes and hamper the overall progress (Gunasena, 2010). Construction disputes and claims tend to be of the most technical nature, and in fact, intensive and multifaceted than other commercial and civil disputes (Gould, 2004).

Accordingly, disputes are virtually ensured due to the complexity and lengthy process in construction projects. Building and other civil construction works constructed on different sites create their specific impediments, which, in turn, have interrupted the project performances. On the other hand, the global economy has created an environment where construction firms are forced to bid for projects at or

below minimum profit levels (Jayasena & Kavinda, 2012). Besides, clients are demanding the contractors execute complex projects without incorporating the details in Contract documents. This has placed an additional burden on the individual contractor to construct increasingly sophisticated projects with limited capital resources and with lower quality. Under these circumstances, it is hardly surprising that the number of disputes within the construction industry continues to increase at an alarming rate (Jayasena & Kavinda, 2012).

According to Gunasekara and Rodrigo (2015), to overcome such disputes, professionals started developing different methods under dispute resolution because professionals themselves have realised the need of a systematic study at the beginning of the project in all aspects and a detailed procedure to be adopted related to the projects. Hence, it was desirable to identify the causes of disputes and develop methods for avoiding or resolving construction disputes without outside intervention by using the best management techniques. Reasoning to that litigation process became the leading dispute resolution process in the construction industry (Gunasekara & Rodrigo, 2015).

When resolving disputes under litigation, some considerable concerns occurred due to the process and the system of the procedure. Because of the problems that arose during the litigation process, the damage acquired to the project involved parties and stakeholders cannot be ignored. With those drawbacks of litigation, the construction industry has accepted 'Alternative Dispute Resolution' (ADR) methods such as negotiation, conciliation, mediation, adjudication, and arbitration (Abeynayake, 2008).

One of the major reasons why parties choose to resolve their disputes outside the courts is the cost, and since the ADR methods have a positive effect on cost, it is a considerable advantage. The judicial process for resolving any dispute involves court fees, documentation fees, advocate's fees and various other extra charges. ADR does not include expert fees or court costs. Alternative dispute resolution usually costs much less than litigation. Furthermore, this facilitates settling smaller financial

disputes in a viable manner. Therefore, selecting an ADR method saves money for the government (Ranasinghe & Korale, 2011).

According to Massachusetts Dispute Resolution Services (2011), speediness of the ADR process is relatively high when compared to litigation. In litigation, due to many cases, a minimal time has been given to each case, and the gaps between hearing dates maybe months. The ADR system only focuses on what matters to the particular trial, and the hearing dates, time, and even the duration can be decided and fixed according to the requirement of involved parties.

Sometimes, in the ADR system, parties have control over the selection of processes, panellists, the length of the process, and if in mediation, even the parties can control and maintain the outcome. In litigation, however, the court and supreme authority have total control. The flexibility of ADR can be highly reflected by this fact opposed to the court system, where the legal system and the judge control every aspect (Gad, Shane, & Strong, 2015). Furthermore, in arbitration, the parties have far more flexibility in choosing the application of relevant industry standards, domestic law, the law of a foreign country, a unique set of rules used by the arbitration service, or even religious law in some cases (Massachusetts Dispute Resolution Services, 2011).

Privacy is fully guaranteed and secured in ADR, reasoning that confidentiality is much higher than litigation. ADR is conducted in private; therefore, it avoids publicity from the media. ADR provides specific resolution processes such as Mediation, arbitration, and mini trials performed in private by maintaining strict confidentiality (Bekele, 2005).

As depicted in literature, despite various advantages of ADR, it has several drawbacks, which block the way of successful alternative dispute resolution while taking into practice, often affecting both parties' sentiment to settle for a compromised decision.

According to Massachusetts Dispute Resolution Services (2011), in certain situations, one side can control the other, which is called 'Unequal Bargaining

Power.' Therefore, a significant imbalance of power exists; one of them is lack of legal proficiency. Where a dispute involves painful legal points, a mediator or arbitrator is unlikely to have the same legal expertise and knowledge as a judge. Furthermore, disputes can be from various situations such as commercial conflicts, social conflicts, legal conflicts, and many others, which require specialised mediators. For example, in most cases, the mediator does not possess a judge's viewpoint. Still, a mini trial is always chaired by a neutral, experienced expert, selected by both parties, who might be even better than a judge.

Most forms of ADR systems are not legally binding; thus, making any award or decision is difficult to enforce. Legal arbitration has a process for internal appeals, which enables the decision as binding and only subject to the court review. Even though the decision taken under mini trials are non-binding, the process has been used effectively in complex cases as an informational guide to yield subsequent settlement by using a highly experienced professional as a neutral third person, selected by both parties (USLegal, 2016).

ADR limits the discovery process and generally proceeds without the protections offered by parties in litigation, such as those rules governed through discovery. Courts generally allow a great deal of latitude in the discovery process, which is not active in alternative dispute resolution. However, mini trials, same as it sounds, is similar to a civil trial procedure. Hence, the worry towards discovering real issues can be omitted by adopting this system as an ADR method (Cengage, 2003). The mini trial is an alternative dispute resolution process which contains many solutions to disputes found in other DR methods (Mix, 1997).

1.2 Problem Statement

Literature has identified the various major issues directly affecting the construction industry due to present malpractice of ADR methods, such as delaying the process, high cost, higher involvement of lawyers, less concentration on technical issues, insufficient knowledge of professionals towards technical and other significant areas and methods, inability to conduct multi-party disputes, limited jurisdiction, the

impossibility of maintaining the relationship between parties, and less satisfaction with the process (Abeynayake & Weddikkara, 2012). Moreover, the literature available on ADR methods practised in the Sri Lankan construction industry and other countries shows that introducing improvements to ADR methods for their efficient performance (as an alternative to the current ADR procedure) will bring definite advantage to the same.

It can be argued on the higher possibility of implementing suitable ADR methods to the Sri Lankan construction industry. As mentioned in the background, 'mini trial' is identified as one of the best ADR methods practised in other countries. Therefore, this research identifies the possible improvements to the damaged system by adopting mini trials via strengthening relevant areas to fill up gaps created by other ADR methods.

1.3 Aim

Aim of this research is to investigate the applicability of "Mini Trial" as a suitable alternative dispute resolution method for the Sri Lankan Construction Industry to make the alternative dispute resolution a more effective and a viable system

1.4 Objectives

The following four objectives were set out to achieve the research aim:

- To review ADR methods, practised successfully in the global construction industry.
- To identify problematic areas of ADR methods used in the Sri Lankan construction industry.
- To examine the benefits and drawbacks of the mini trial compared to other ADR methods practised in Sri Lanka.
- To suggest improvements to ADR methods by using the mini trial for efficient performance in resolving construction disputes.

1.5 Methodology

A literature survey was conducted to find relevant available information on previous research carried out on ADR methods in comparison to mini trial, for accomplishing the above aim and objectives. The literature review aimed to study and understand the ADR methods, not only in the Sri Lankan construction industry, but also in the international arena, to identify their effectiveness, advantages, disadvantages, and other alternative methods.

Semi-structured interviews were held among construction-related experts such as stakeholders, professionals, and experts connected to the dispute resolution field. Both open-ended and closed-ended questions were included in the survey to achieve the research aim. Data were analysed using manual content analysis.

1.6 Scope of the Study and Limitations

Relevant data were collected from stakeholders, professionals, and experts who have experience in construction dispute resolution. Data collection sample was limited to three professionals who are practising in the industry consist of experience professionalism among clients, consultants, and contracting organisations on mini trial ADR methods.

1.7 Dissertation Outline

The research report was categorised into the following chapters for easy reference:

Chapter 1 - The **introduction** provides a summary of the research under sub-headings, namely background of the research, problem statement, aim, objectives, methodology, the scope of the study, and dissertation outline.

Chapter 2 – The **literature review** chapter provides an overview of currently practising ADR methods in the construction industry, both locally and internationally. It discusses relevant legislation and Conditions of Contract used for constructions related to ADR methods and the global application of mini trial as an ADR method.

Chapter 3 – This chapter sets out the **research framework** used to guide the research to achieve its aim and objectives. It explains the research philosophy, methodology, and methods adopted, and the modes of data analysis applied for the investigation.

Chapter 4 – This chapter on **research findings** discusses the different ADR methods by identifying problematic areas, potential solutions, and critical attributes of each ADR method, and other alternative dispute resolution methods are in use other than Sri Lanka. Findings were further elaborated by using outcomes acquired mostly from the interviews. This chapter also contains data analysis results, relatively obtained by using manual content analysis method.

Chapter 5 – Finally, the **conclusion** chapter is derived from research findings. It provides recommendations to use the mini trial system as an alternative and improved ADR method in the Sri Lankan construction industry.

2.0 LITERATURE REVIEW

2.1 Introduction

The primary purpose of this chapter is to present a thorough clarification regarding the research with the help of accessible material and resources. This chapter is based on a comprehensive review about dispute resolution and alternative dispute resolution with the help of existing secondary data. Furthermore, it discusses ADR methods practiced in the construction industry with benefits and drawbacks compared to mini trial ADR methods.

2.2 Disputes in Construction Industry

In every industry, wherein people need to work together and cooperate with each other, there is a high possibility for disputes to arise, and the development industry is not an exception. Often, there may be a lack of knowledge about the motives at the back of the disputes, however it is critical to apprehend the causes of disputes, to avoid disputes from taking place and to remedy them in the event that they occur (Davis, 2006). Due to negative dispute resolution method which working towards in most countries in particular in Asia, as stated by using Mohamed, Oseni and Raji (2015), it may be visible that parties who are involved motel to exclusive inappropriate and unethical tactics in their try to remedy disputes in a brief and clean manner only to obtain short term benefits to parties. Due to its results, long time perils cannot be ruled out at any cost.

As regards, dispute resolution choices offered to parties to a construction contract, some work higher than others, betting on factors like nature of the project, problems under consideration, the precise stage wherever dispute arises and relationship between parties. Additionally, to legal proceeding, in line with Rechtsanwalt (2015) arbitration, mediation, conciliation, negotiation and skilled determination area unit all ways of dispute resolution that area unit either well established or whose usage is increasing in construction comes. judgement has conjointly been used a lot of recently as a written agreement style of dispute resolution, however it's conjointly been formally projected as a style

of dispute resolution which might be offered to a celebration as a statutory right. Save in respect of legal proceeding, they're all confidential processes (Korala & Weddikkara, 2012).

Due to present malpractice of ADR methods, major issues directly affecting the construction industry have been identified clearly by different parties such as practitioners, experts and researchers (Weston, 2001). The payoff due to these types of misconducts directs to delay of the process, high cost, higher involvement of lawyers, lack of professional knowledge towards technical and other directly affecting areas and methods, low concentration on technical issues, failure to perform multi-party disputes, restricted authority, risk of partnership failure between involved parties and lower gratification towards the process (Abeynayake & Weddikkara, 2012).

When considering a sophisticated settlement process other than usual alternative dispute resolution to avoid the issues of the same, a mini trial has been identified as the basic refined settlement method (Harmon, 2003). As stated by Brook (2015) event for a complex technical issue of mixed law and fact, a mini trial has been recognised as a more suitable resolution system to obtain a productive outcome.

2.3 Dispute Resolution Methods Practice in the Construction Industry

2.3.1 Litigation

It is purely the word used at the Courts to describe the resolution of disputes. In general, the nature and level of damages sought will determine what court an action will be heard, in which have an important impact on the speed and cost of the action. Actions in the High Court Commercial List be inclined to manage actively to the greatest (Çevikbaş & Köksal, 2018).

According to Gould (2004) Litigation will also allow parties to an action to join other parties in, either as co-defendants or as third parties.

The courts and their jurisdictions are basically governed by the Constitution and the Judicature Act No. 02 of 1978 in the Sri Lankan judicial system. The original civil

jurisdiction which severely affects the contractual matters in the construction industry are vested on District Courts according to the aforesaid legal provisions, except where the cause of action has arisen out of some commercial transactions of more than five million rupees. Act No. 10 of 1996 vested jurisdiction in the Commercial High Court established by High Court of Provinces (Special Provisions). According to the procedural law of Sri Lanka the appellate jurisdiction of construction disputes is vested in the Supreme Court, Court of Appeal and Civil Appellate High Court of the Democratic Socialist Republic of Sri Lanka.

When a party seeks an injunction or declaratory relief which is only available in court proceedings and when the nature of the dispute is such that a party requires the court to establish a legal precedent or when a party to the dispute does not act in good faith as there is no other option other than litigation (Turner & Turner, 1999). Further, legal enforceability, conclusiveness of the decision and the involvement of independent and impartial judges from personal and professional relationships can be recognised as some of the advantages of litigation.

2.3.2 Alternative Dispute Resolution Methods

Due to a variety of shortcomings in litigation methods disputants attempt to look for alternatives. Alternative Dispute Resolution (ADR) are methods which are introduced as alternatives to traditional litigation procedures. Hence, it is expected to resolve problems in the traditional litigation process by adopting ADR methods in the construction industry as well (Bekele, 2006).

Dispute resolution has been considered the domain of the Judiciary for quite a while. The work of Treacy (1995) on construction projects put forward that any ADR method should have the characteristics expected from an alternative method such as increased confidentiality, direct communication, preservation of ongoing party relations, issues on each side of the dispute, saving in trial expenses, hearing by the qualified, neutral experts and ability to handle complex matters. In addition, Brooker and Lavers (1997) have added some more characteristics such as less costly, facilitation of early and reduced time disposition. Resolution of disputes in the

commercial sector have become more and more popular outside the courts over the years. In fact, it had been recognized as a requirement in modern times. Resolution of disputes has received focus and attention more than ever before in the construction industry with its rapid development.

The most important prerequisite for a successful ADR method is the desire for the parties to explore the possibility for settlement. According to Pengilley (cited Cheung, 1999), the philosophical prerequisites of ADR can be identified as follows:

- All ADR methods are compromised.
- ADR methods must involve a "win/win" solution to the problem (actual or perceived).
- Parties must be realistically aware that ADR method is the best alternative to a negotiated agreement.

There are two corporations of ADR methods in the construction enterprise as formal-binding techniques and informal- nonbinding techniques. Binding ADR technique is predominantly arbitration and to some extent Adjudication. Non-binding ADR strategies include basically negotiation and mediation (De Zylva, 2006). When considering the ADR methods, it is suitable to settle technical disputes where a 3rd celebration is selective with its technical expertise. Therefore, when considering the construction enterprise, ADR techniques are appropriate for complex projects and it could be an aspect in the achievement of a project. The possibility of continued business family members being maintained in ADR method is high, and this component is significantly critical to the construction industry (Assaf et al, 2000).

2.4 ADR Methods Practice in Construction Industry

As a result of the literature survey conducted it was understood that there are five ADR methods practicing in the construction industry and those are Negotiation, Mediation, Conciliation, Adjudication and Arbitration.

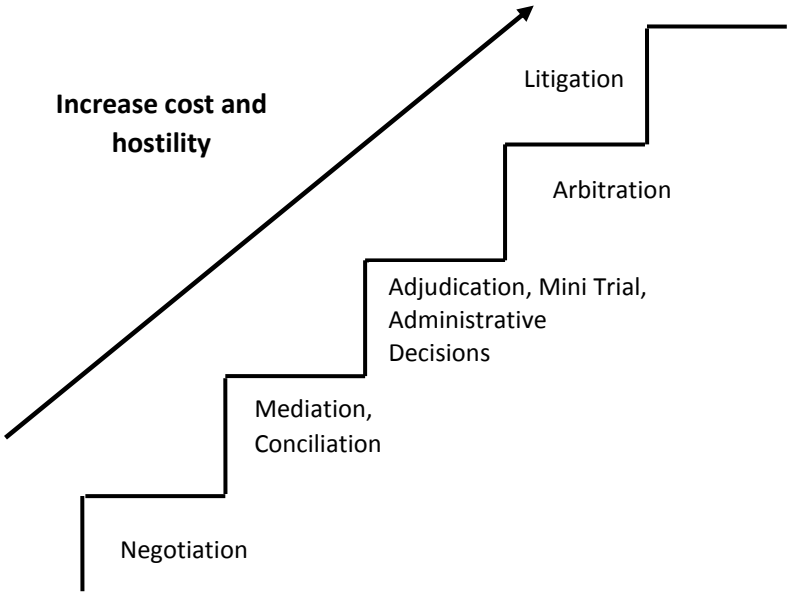

Figure 2.1: Stair step model for Dispute Resolution Process in Construction
Source: Cheung(1999)

2.4.1 Negotiation

Negotiation is the root of all ADR methods according to Cheung (1999). Attempts to reach a mutually satisfactory agreement through informal and unstructured discussions by parties is a voluntary process. Successful negotiators typically focus on problem solving and trying to satisfy both parties' interests without determining who is right and who is wrong.

In the technique of negotiation, the parties remain on top of things of the outcome, the freedom to stroll away freely at any time even in the course of the system truly suggests that no end result is imposed at the parties. A neutral third celebration is typically now not present. Moreover, even though members often appoint attorneys educated in problem-solving to symbolize their pursuits in negotiation, this isn't essential (Hampson, Peters & Walker, 2001). Negotiation is specifically precious in situations where destiny interaction between the events is desirable because negotiation is extra confrontational than litigation and helps restore, preserve or reinforce the parties' business relationship (Kleiner & Mose, 1999)

Furthermore, in step with Yates (2011) if negotiation fails, the disputant has moved to the following step and they will select to are seeking help from a neutral 1/3 party. There are two possible formats: the standing neutral and non-binding or the binding resolution. The standing neutral idea involves the participation of a neutral individual adjoining to the construction section of a project solving issues as the source. This method is rather less expensive because issues are addressed tremendously informally and with initial facts (Rameezdeen, 2006).

2.4.2 Mediation and Conciliation

These are terms which are often used interchangeably but the variance between them is not clear constantly. According to Alaloul, Hasaniyah and Tayeh (2018) both are based on being a without prejudice process which involves a neutral third party facilitating the parties to reach an agreed resolution to their dispute. However, in mediation, the mediator's role is purely a facilitative role. The mediator does not provide any evaluation on what the solution to the dispute should be. A conciliator on the other hand, may make proposals to the parties to resolve dispute if the parties are unable to settle them and usually it described as a "recommendation".

Generally, the recommendation if not rejected within a limited timeframe will become final and binding on the parties.

Kleiner and Mose (1999) define mediation as a co-operative, collaborative, dispute resolution process where the parties retain control of the outcome. According to Herbert Smith (2007), mediation is a structured settlement of negotiation facilitated by a neutral third party with no decision-making power. The entire process is voluntary and thus lends itself better for mutually agreeable settlements (Kleiner & Mose, 1999). Meyer (1995) reveals that mediation can save 80% of litigation costs. Herbert Smith (2007) lists efficiency, cheapness, and confidentiality as advantages of mediation. However, the mediation practice in the Sri Lankan construction industry is still at the initial stage. In Sri Lanka the mediation agreement cannot be enforced in courts of law. In the industry any construction professional can act as a mediator and may try to achieve an amicable settlement towards the dispute. ICTAD conditions of contract motivate the mediation method in the construction industry as well.

As stated by Gould (1998) conciliation is a process where the parties to a dispute, with the assistance of a neutral third party, appointed by the parties identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. Also, it is a process of resolution in disputes, where the both parties agree to bring down a conciliator to resolve their disputes.

In conciliation, advisories will be delivered collectively efficaciously by a third party. The conciliator is the "host" to the negotiations to take place. However, he does not take a lively role inside the meetings. The negotiations are being completed in excellent religion of the adversaries. The conciliator's role is absolutely to get the parties together and to restrict the rhetoric and counterproductive pre-negotiation attitudes of the parties (Kleiner & Mose, 1999).

Conciliation differs from arbitration with the manner and it has no criminal standing. The conciliator generally has no authority to are seeking for proof or call witnesses, generally writes no decision, and makes no award. Conciliation differs from mediation due to the fact its intention is to conciliate, maximum of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a manner that optimizes party's needs, takes feelings under consideration and reframes representations (Berry, Oosthuizen & Preez, 2010).

The conciliator meets the parties in a separate attempt to resolve their problems. The conciliator then has each of the parties separately prioritized their own list from most to least important. A party then goes back and forth between the parties and encourages them to "give" on the objectives one at a time, starting with the least important and working toward the most important for each party in turn (Kleiner & Mose, 1999).

2.4.3 Mini Trial

Mini trial ADR approach has been dependent as a fusion of mediation, negotiation and adjudication (Eaton, 1993). According to Agarwal & Owasanoye (2000) mini trial process is one in all the most flexible and advanced techniques in alternative dispute resolution, where each celebration has given a chance to give their very own

case no longer handiest in the front of a collectively decided on impartial advisor, but also the competition birthday party, beneath a voluntary mock trial setup. Each participating corporation could designate a senior manager to represent the agency and to make 'binding commitments' on behalf of the enterprise. Ideally this manager might not have had any sizeable previous involvement inside the dispute (Mix, 1997). As stated by using Eaton (1993) the federal government of America has decided on mini trial as one among the most desired processes to apply in dispute resolution especially because of the higher price avoidance nature and confined time requirement to finish the process.

2.4.4 Adjudication

According to Planterose (2003) adjudication is very similar to expert determination and in many cases may actually be that, save under a different name. Adjudication allows decisions to be made promptly which are enforceable and are to be complied with, pending any final determination of the dispute by arbitration or litigation (Grould, 2004). However, statutory adjudication in the United Kingdom is considered as being distinct from expert determination as such adjudications are subject to the rules of natural justice.

As depicted in literature, according to adjudication method that until the dispute is finally resolved by arbitration or litigation, the disputes are referred to a neutral third party for a decision which is an obligatory on the sole parties. In the English legal system this was a principle developed and finally held in the case of *Macoh Civil Engineering Ltd. Vs. Morrisson Construction Limited*. In this case the Court held that 'Adjudication process intended to be a speedy mechanism for settling disputes in construction contracts on a provisional interim basis and requiring the decisions of adjudicators pending the final determination of disputes by arbitration or litigation'. In England this method of dispute resolution was introduced by Housing Grants, Construction and Regeneration Act in 1996 and the concept behind adjudication was aided by recommendations of Sir Michael Latham's fundamental review of the construction industry published in the report 'Constructing the Team' in 1994 (Planterose, 2003; Sims, 2003).

According to Jayalath (2015) in Sri Lanka there is no such statutory recognition for adjudication method and the adjudicator's award has no legal recognition. It is practically proceeded according to the ICTAD and Federation Internationale Des Ingenieurs Counseils (FIDIC) conditions of contract. Therefore, unless the parties agree to enforce the award, there is no legal enforceability of the adjudicator's award. Moreover, Rodrigo (2019) mentioned that if one party does not agree with the adjudicator's decision, there is no legal remedy, other than refer the case to the arbitration.

However, in Democratic Socialist Republic of Sri Lanka adjudication doesn't consist a legal enforceability and it's been highlighted as a serious drawback within the process together with reasons like dissatisfaction in large scale and sophisticated disputes, imposed time schedule, risk of amplifying the prices, wide powers of the adjudicator and wish for qualified adjudicators (Abeynayake, 2015). Therefore, it'd be interesting to own an insight into the matters that may cause increased dissatisfaction within the process of dispute resolution within the Sri Lankan industry. a trial has been made to spot the capabilities within the group action of adjudication while the system entertains drawbacks of adjudication (Jayasinghe & Ramachandra, 2015).

2.4.5 Arbitration

If the dispute cannot be resolved amicably through mediation or adjudication, the next step is to refer the dispute to an arbitrator for a binding decision. This is typically a forward step, involving formal identification of opposing positions and issues. This requires considerable preparation by the parties, typically with the assistance of lawyers, consultants and expert witnesses (Gad, Shane & Strong, 2015). Most commonly used method to resolve construction disputes is Arbitration. Most construction contracts comprise arbitration clauses to refer to the requiring parties any dispute to arbitration (Cheung, 1999). An arbitral tribunal is expected to act fairly and impartially and to adopt procedures to avoid unnecessary delay or expenses. American Institute of Architects praise arbitration for its wellbeing entrenched as a preferred method of private construction dispute resolution for many years.

This is supported by a statutory framework and is commonly used in construction disputes in Ireland. The arbitrator, who usually has a construction background, effectively sits as the judge and follows procedures akin to those applied by the Courts. However, unless specific provision has been made in the relevant contracts either of the parties to the arbitration is unable to force others to be joined into the arbitration. The arbitrator's award is a binding decision which can only be challenged before the Courts in very limited circumstances (Abeynayake, 2008).

An impartial arbitrator is anticipated to lose the problem by looking into both expressed and implied terms of the contract. Professionalism plays a demanded role more in arbitration compared to mediation (Neale and Kleiner, 2001).

The reasons for the usual attraction to arbitration in the construction industry can be attributed to privacy, speed, flexibility and choice and location of the tribunal. Further Sims (2003) states the three main reasons for selecting arbitration as ADR method in the construction industry as follows,

- The prevalence of arbitration clauses in standard forms of contract.
- The technical content of disputes leading to the use of arbitrators' skills in technical disciplines.
- The need in many disputes to have a tribunal empowered to open up to review and revise the decisions or certificates arising from professional judgment relating to the contract that administers the project.

Coutts and Dann (2009) have stated that in many countries' arbitration has been seen as a green and probably just approach of dealing disputes. But they have also stated that arbitration has additionally become highly priced as conventional strategies of litigation and many nations have diagnosed that the conventional procedures for resolving disputes in case of arbitration are both pricey and time consuming.

Overview of literature findings according to Billings (1990) and Klingaard & Mussman III (1992), Table 2.1 summarises the characteristics of ADR methods and litigation method as a comparison.

Table 2.1: Characteristics of ADR methods and litigation method as a comparison

Characteristics	Litigation	Arbitration	Adjudication	Mini Trial	Mediation	Conciliation	Negotiation
Privacy	-	√	√	**v**	√	√	√
Expert Involvement	-	√	√	**v**	√	√	√
Flexibility	-	√	√	**v**	√	√	√
Decision in favour of both parties (win-win)	-	√	√	**v**	√	√	√
Positive relationship between parties (informal)	-	√	√	**v**	√	√	√
Final & Binding Decision	√	√	-	**-**	-	-	-
Neutral Third-party involvement	√	√	√	**v**	√	√	-
Third party involvement towards decision	√	√	√	**v**	-	-	-
A Clause included in Contract as an agreement	-	√	√	**v**	√	-	-
Discovering nature of the issue	√	-	-	**v**	-	-	-
Involvement of persons with decision making authority	-	-	-	**v**	-	-	-
Time and Cost Effectiveness	-	√	√	**v**	√	√	√

2.5 Common Advantages of ADR Methods

Arbitration Resolution Service (2018) stated that there are some common advantages of using alternative dispute resolution methods over litigation. Some of them are as follows,

- Low Cost – Costs normally associated with court proceedings such as court fees, delays and having to follow complex court processes are not incurred with ADR. The relative cost of ADR in comparison with the Courts is advantageous.
- Speed – The use of ADR is much quicker. As the parties get around the negotiation table themselves to solve the dispute without the need for

representatives (Abeynayake, 2008) and therefore, one of the quickest and cheapest methods of ADR is negotiation.

- Control – With ADR the parties retain control over the dispute and the way it is resolved rather than handing over control to the Courts. There is a saying with litigation in the courts to the effect that once started no matter how sure you are of the merits of your own case, there is no knowing when it will end (Rechtsanwalt, 2015).
- Adversarial – Court proceedings are adversarial and about winning not losing, whereas ADR is about finding possible solutions to disputes. As the proceedings are in private it can be a damage limitation exercise. This will be important if the parties expect to do business with each other in the future. ADR can avoid bad feelings `between the parties (Gad, Shane & Strong, 2015).
- Privacy – Court proceedings are conducted in public. It is possible for the case to be reported in the local or national newspapers as the press has been attended. A clear advantage of ADR is that the methods used are private. If commercial reputations are at risk, again the ADR may be an important factor.
- Expert Arbitrators – With court proceedings the Judge may be an expert in the area of law involved but is not likely to be an expert in building or civil engineering or whatever the subject of the dispute is about. The judge relies upon facts being presented to him or her following detailed and expensive trial preparation. Expert witnesses may well be necessary. This will inevitably contribute to the length of the trial and the overall cost. When expert arbitrators are used, they do not rely upon expert evidence in the same way, this means that the proceedings are usually quicker and cheaper (Abeynayake & Weddikkara, 2015).

2.6 Common Disadvantages Associated with ADR

As per Doyle (2012), there are some considerable disadvantages associated with ADR methods in common and those are as follows.

- Willingness to compromise – The use of ADR is dependent upon the willingness of individuals to compromise and to this extent it is arguable that the parties are more likely to settle for less whereas once they have embarked upon court proceedings their expectations may be higher. It could be that one of the parties does not accept there is a problem and is not prepared to compromise (Neale & Kleiner, 2001).
- Uncertainty – Although ADR is generally quicker and cheaper this is not always the case. Even negotiations can drag on and become lengthy and expensive with no certainty of a resolution of the dispute. At least with court proceedings there is usually certainty (Yates, 2011).
- Complexity and Expense – Generally ADR is cheaper than using court proceedings, but some formal arbitration hearings can still be complex and expensive depending on the subject matter of the dispute. There are professional and trained arbitrators, and these can be expensive (Abeynyake, 2008).
- Making a statement – Because ADR is confidential, they are unsuitable if one party wants to make a point and put out a clear warning or send out a message about the proceedings and their outcome.
- Immediacy - ADR is not suitable where one party wants the other to stop instantly. This could be in the case of one party wanting to prevent another from selling goods which are of a similar design to something they are selling or in the case of harassment.
- Time limits – It is worth remembering that if there is a time limit involved in a legal claim it may not be appropriate to use ADR. It does not put a stop to any legal time limit and may mean that, if unresolved, the time to make a legal claim has passed (Gould, 2004).

2.7 Expectations from a New ADR Method

A large portion of the development debates are profoundly specialized in nature and in actuality concentrated and multifaceted than other business questions. Clearly questions in the development business may happen because of specific conditions. With the expansion in development exercises, the development business needs a quick and practical debate goals strategy. As referenced before suit is the customary method of question goals and downsides of case have opened up to 'Elective Dispute Resolution' (ADR) strategies. The attractive highlights of ADR strategies are quick, economical, reasonable, basic, adaptable, classified, least deferral and so on. Be that as it may, ADR techniques are likewise having issues like disadvantages and entanglements separated from their particular preferences. Along these lines, to address those traps and downsides, various specialists have recommended the Mini Trial ADR technique as an effective procedure to rehearse (Chan, 2003).

2.8 Mini Trial / Executive Tribunal in Alternative Dispute Resolution

Mini Trial which also known as Executive Tribunal came up as the ADR method next in line as successfully using method among countries who lead in the construction industry such as UK, USA, Gulf countries, Singapore, South Africa etc (Alaloul, Hasaniyah & Tayeh, 2018).

According to Mix (1997),

"Mini trials are private, nonbinding proceedings in which the parties may agree to present their "best case" in summary form, usually through their attorney, to a panel of top management representatives who are not involved in the dispute. Thus, several ADR alternatives to arbitration are available to construction industry participants; these alternatives may prove more suitable to the construction industry than either traditional litigation or arbitration procedures."

2.8.1 Structure of the Mini Trial Procedure

A smaller than normal preliminary has two unmistakable parts, the first is data trade between parties (both previously and during the little preliminary itself), and the

second concentrated arrangements between parties (Smith, 2002). The procedure of little preliminary can be started by either gathering to the contest. At the point when one gathering welcomes the other party for a scaled down preliminary and sends a composed greeting distinguishing the subject of contest, the procedure of smaller than usual preliminary is said to have been started. At the point when the other party acknowledges the greeting recorded as a hard copy, the small-scale preliminary procedures are regarded to have started. There is no mini trial proceeding if the other party rejects the invitation. Mostly, only one neutral adviser is appointed to resolve the dispute between the parties. The parties can have more than one neutral adviser, if desired. The neutral adviser(s) is appointed on mutual consent of the parties. If the parties do not wish to appoint their own neutral adviser(s) or do not reach agreement on any particular name, they may enlist the support of any national or international institution for the purpose. The neutral adviser is expected to possess (Agarwal & Owasanoye, 2000).

- The parties set the ground rules on agreement to a basic framework.
- Before the trail, the parties exchange information informally, unless the dispute is in the advanced stages of litigation, in which case they continue formal discovery procedures.
- The hearing generally continues from half a day to 4 days
- The attorneys and experts can present their cases to their best advantage, ask questions directly, and use exhibits and visual aids liberally (Brook, 2015).

The management consultant and their prison consultants at the same time develop a mini trial settlement. Since the mini trial is to help making decisions, the partied need to define they may be after and what must happen throughout the system. This settlement serves as a manual for the entire system, specifying roles, time limits, schedules and procedures with a purpose to be used at some point of the mini trial itself. The mini trial agreement also must specify dates when discovery of the felony procedure of gathering evidence and also will be concluded, and agreements concerning limits with the intention to be located on discovery or commitment or the parties to exchange information. While the mini trial settlement establishes a clean structure, it's also rather flexible due to the fact the management consultant can agree

upon any procedures with a view to paintings for them (Alaloul, Hasaniyah & Tayeh, 2018).

As per Arndt, Blog and Frie (2002), lawful advisors of the taking an interest association would then set up their case, supporting the situation of the association. The uniqueness of introducing the case is, as referenced prior, the moderator of the case in each side realizes the term may be a couple of hours or hardly any days in earlier. This advantages each gathering to give their case best contentions and most grounded supporting proof, which will be generally convincing to the administration agent. The time term of the introduction of the case ought to be indicated in the smaller than expected preliminary understanding. Typically, a small-scale preliminary understanding will indicate that the two players set up a short position paper laying out their case. These papers will be traded at a settled upon time before the scaled down preliminary, so the administration delegates will have the option to peruse them preceding the smaller than normal preliminary itself (Billings, 1990).

At the agreed date, legal advisors or the attorneys for the participating organisations will present their cases in front of the management representatives. This presentation can be referred to as 'the conference'. As mentioned before these presentations will be limited as agreed prior to the start of the procedure. There may also be a period for follow up questions and answers after each presentation (Gould, 2004).

Option is given to the management representative to get assistance or to consult an impartial neutral advisor. If so, the neutral advisor can act in different roles depending on the management representative. Actually, the neutral advisor might preside over the presentation portion of the mini trial, or simply advise on points of law or technical matters. Retired judges or law professors who could discuss those arguments in an impressive way can be the neutral advisors. Technical experts on the subject matter of the dispute, who are able to advise on standard engineering practice or other technical issues too can be the neutral advisors. Any opinion given by the neutral advisor are only advisory. The management representatives made decisions after the end of the formal mini trial presentations (Agarwal & Owasanoye, 2000).

Results of the mini trial are documented carefully as any other negotiated settlement. This can be reviewed by whoever has an interest to know whether the negotiated settlement is reasonable. A provision on statements made by participants during the mini trial will also be included in the agreement. This cannot be used against participants in court if no agreement is reached during the process. This specifies that concessions made in the relatively informal mini trial conference, cannot be dragged up later in court (Klitgaard & Mussman III, 1992).

2.8.2 Nature

As expressed in the definition, a scaled down preliminary is a judicially directed, non-restricting continuing where counsel for parties in a pending debate lead constrained revelation and afterward present a synopsis of their case under the watchful eye of the adjudicator and delegates of each gathering. That outline can incorporate live declaration, synopses of declaration, shows, and whatever else is expected to pass on the quintessence of the gatherings' situations in a synopsis style. After the synopsis introductions are finished, the appointed authority gives their impressions of the relative qualities and shortcomings of the gatherings' positions and meets with them trying to settle the case. In the event that the case doesn't settle, disclosure is finished, and the case continues to preliminary (Abbott & Flanery, 1993).

With the highly flexible and expedited procedure of mini trial, each party presents an abbreviated version of its case to a neutral advisor (a judge other than the presiding judge) who then assists the parties to negotiate towards a settlement. Each side's view of the dispute will be presented in an orderly and abbreviated manner similar to a voluntary mock trial designed. In the mini trial the senior executives of the disputing parties summarize the strengths and weaknesses of each party's position to a neutral advisor which involves one to three-day process. The mini trial is more structured than mediation, yet still avoids the high costs associated with discovery in traditional litigation. The mini trial is one of the most popular ADR methods currently in use and has been the preferred approach used in the resolution of Federal Government contract disputes (Eaton, 1993)

Mini trial is the method of the resolution of disputes through this alternative dispute resolution. It is comparatively a new device for the resolution of disputes. Sometimes it is also called "exchange of information". It has nothing to do with a criminal or any other trial and therefore this procedure is called as a mini trial. In fact, in this process, no adjudication process takes place. Rules for "mini trial" have been made by various national and international institutions engaged in providing arbitration and mediation facilities. Parties to a dispute can select and adopt any such institution and its rules for the resolution of their dispute through mini trial. Mini trial is a time bound process. Under normal circumstances the entire process of mini trial should be completed within 90 days from the date of its commencement (Agarwal & Owasanoye, 2000).

2.8.3 Purpose

The reason for a smaller than normal preliminary is to arrive at a commonly decent goals of a contest without making legal point of reference and without acquiring the full expenses of a preliminary (Arndt, Blog & Frie, 2002). The smaller than usual preliminary is especially viable in business questions normally found in the mineral law zone where lawful issues (rather than believability or intense subject matters) prevail. The method of reasoning behind the idea is that, where two gatherings have a decent confidence debate with regards to the translation of an agreement, settlement may not be conceivable until each gathering increases a comprehension of the other's position and a review concerning how their particular cases would show up at preliminary and be seen by an unprejudiced appointed authority. The smaller than usual preliminary configuration isn't directly for all questions. Where genuine or intense subject matters prevail, at any rate one gathering is probably going to demand a jury preliminary. Similarly, if a customer needs a conclusive, legal goals of an agreement issue, the small preliminary isn't proper. The smaller than usual preliminary isn't intended to name a by and large champ, it is intended to encourage an answer of a legitimate issue (Abbott & Flanery, 1993).

2.8.4 Specialities of Mini trial compared to other ADR methods

The advisory opinion is not binding on parties unless parties agree that it is binding and enter into a written settlement agreement (Herman & Herman PLLC, 2016).

A mini trial can often be more effective than more direct forms of negotiation, because it gives the involved parties the opportunity to step back and view the relative strengths and weaknesses of their case more objectively. It also tends to enable them to focus on the core aspects of the case rather than wasting time arguing over smaller details (Caldwell & Kearns, 2017).

A time limit to complete the mini trial will be fixed by the parties. A time limit provides incentive to reach a settlement, or to return the dispute to status quo. If the executives have not reached a solution, the time limit protects them from a "loss of face" in reinstating the litigation (Klitgaard & Mussman III, 1992). The dispute shall be referred to arbitration if it is not resolved by mini trial procedure within 90 days of the initiation, or if either party will not participate in such procedure (Agarwal & Owasanoye, 2000).

The major function of the technique is to permit senior executives from both events to hear, and assess, the case or dispute between their sides. Formal displays are made inside the presence of the executives and a neutral chairman in to initiate settlement (Fenn, O'Shea & Davies, 2005). With the concept it's miles to get pinnacle level management to take a seat through and listen carefully to both their own nice case in addition to that of the other side, and to attain a management decision that is primarily based upon a sensible appraisal of each positions (Zack, 1998). It offers the senior executives an immediate, nonthreatening opportunity to end up fully informed about the dispute without being brazenly dedicated to presenting a settlement. It opens the door to direct discussions among the executives, absent the vitiating effects of an ongoing discovery procedure or the manipulative posturing-and hardening of positions-that are incident to the very last education for trial. The mini trial succeeds as it presents a contemporary update to senior executives on the dispute from opposing points of view. The briefing lets in the executives to obtain a far exclusive

perspective, and broader genuine understanding, than in-house briefings from their own impartial recommend or employees (Klitgaard & Mussman III, 1992).

After hearing all the facts by executives, the executives themselves generally realise that:

(i) High costs of litigation will avoid potentially on resolving the dispute on a professional basis.
(ii) Each side has something to say for its position; and
(iii) Each side has a recognisable risk of losing.

In sum, the mini trial permits the parties to obtain a mini view of the case, at low cost, with a little injury to each party's professionalism or reputation (Klitgaard & Mussman III, 1992).

According to Mix (1997) mini trial can be reviewed as

- Voluntary : No one is pressured into using a mini trial. Any organisation agreeing to participate in a mini trial, only because the involved partied believes the procedure is advantageous. Any party has the right to drop out at any time, during or after the conference.
- Expedite : Participants commit themselves to an expedited schedule. Issues cannot drag on for a longer time period. Since time for presentation of cases of each party will be strictly limited, legal advisors or attorneys must focus only towards their best arguments.
- Non-Judicial but Managerial : Decisions are made by negotiation between the management representatives. No judges make any decision for the parties.
- Informal : The conference does not have to comply with any strict rules for how the procedure should be conducted. Participants can decide what procedure they want to use, what roles people will play and what issues will or will not be discussed. Even though there is a structure, mini trial is a highly flexible procedure because it can be conducted in any way the management representatives require for them to obtain information towards proper decision making.

- Confidential : Since everyone who is involved in the procedure is unaware of the final decision towards the settlement, every party needs to be secured towards protecting their abilities to face a court case if the parties could not reach a settlement. Statements made during the mini trial conference cannot be used against any party. Confidentiality alleviates this concern and encourages the parties to make honest and frank comments and concessions during the mini trial conference.

2.9 Types of Mini Trial

As Valdhans (2007) mentioned, there are two types of mini trial proceedings. Following types, executive mini trial and judicial mini trial have been illustrated according to the same.

2.9.1 Executive Mini Trial

An Executive mini trial which is not an actual trial involves a structured settlement process. Each side presents abbreviated summaries of its cases to the major decision-makers for the parties who have authority to settle the dispute. The summaries contain explicit data about the legal basis and the merits of a case (Caldwell & Kearns, 2017).

The procedure for the most part keeps increasingly loosened up rules of disclosure and case introduction than may be found in a court or other conventional continuing and as a rule the gatherings concede to explicit restricted timeframes for introductions and contentions. An outsider unbiased may regulate a smaller than usual preliminary. That individual is answerable for clarifying and keeping up a systematic procedure of case introductions and may offer a warning input in regard to a settlement extend, whenever mentioned, instead of offering a particular answer for the gatherings to consider. The outsider may likewise give intervention administrations upon request (Klitgaard & Mussman III, 1992).

The rationale behind an executive mini trial is that if the decision-makers will be better prepared to successfully engage in settlement discussions if they fully informed of the merits of their cases and that of the opposing parties.

2.9.2 Judicial Mini Trial

According to Valdhans (2007), judicial mini trial is an abbreviated hearing that involves attorneys for all of the parties to the litigation. Attorneys put on their clients' experts for a quick decision on the preliminary issue, by a judge picked for that particular purpose. The judge renders a non-binding opinion at the conclusion of the mini trial. The case will proceed to trial in the normal manner if the parties are unable to conclude a settlement.

The Judicial mini trial can be helpful when the parties are "stuck" on preliminary issue unwilling to negotiate on the full range of issues and that both sides think they can win. The mini trial on preliminary issues may be effective to break the logjam.

2.10 Special Advantages of Mini Trial

The procedure identified as risk-free in nature and the same entertain most of the practitioners and experts of the industry to involve mini trials since its non-binding and either party can withdraw at any time. As it is a collaborative process it tends to succeed for many reasons (Frankelstein, 1994).

As mentioned above, the mini trial is a settlement technique that aims to facilitate efficient and effective resolution of civil disputes. As mentioned by Zack (1998), a few of the advantages to be gained through the mini trial process are as follows.

- Savings of legal fees or any other expenses towards the dispute resolution process is a considerably countable advantage when comparing litigation and arbitration.
- The expedited procedure is less costly and less lengthy than litigation

By the character of excessive clarity and confidentiality, the mini trial technique profits the trust of practitioners and encourages them to clear up the dispute all

through a positive period without dragging the process (USLegal - 2016). According to CPR Institute for Dispute Resolution (1998) all offers, promises, behaviour and statements, whether oral or written, made within the route of the proceeding via any of the parties, their agents, employees, specialists and attorneys, and with the aid of Neutral Adviser are confidential.

The procedure causes less disruption of relationships between parties, which is advantageous if parties have a professional relationship that they wish to continue (Arndt, Blog & Frie, 2002).

Direct association of administrators or representatives with the authority of dynamic. Elevated level officials on each side become engaged with settling the debate at a previous stage than expected in case. They hear the rival side's story, maybe just because, not through their own insight's words, yet legitimately from the adversary. This can extend their comprehension of the issue and its underlying foundations, and potentially clear up any misinterpretations or misconceptions regarding the opposite side's activities and positions (Smith, 2002). In the event that administration delegates are progressively senior, the more noteworthy the scope of alternatives they are probably going to see for a productive arrangement. In certain conditions arrangement will be more beneficial if more than one delegate of each gathering takes an interest (CPR Institute for Dispute Resolution, 1998).

The hearing allows each party to hear the other’s position and to consider relative strengths and weaknesses of each side (CEDIRES Center for Dispute Resolution, 2003)

The degree of preparation required for a mini trial will be very useful for subsequent processes, such as trial, should the mini trial fail to succeed.

Non-binding results, privacy, party participation and control over the process are also considered advantages of the procedure (Zack, 1998).

2.11 Possible Disadvantages of Mini Trial

The considerable disadvantage is the management personnel may not be trained to handle such issues. Yet that is an internal issue of the organisation and it has to be addressed within the organisation. This method cannot distract from such issues (Zack, 1998).

Furthermore, mini trial shares the following possible disadvantages with other ADR methods as well (Caldwell & Kearns, 2017).

- If the parties could have resolved the conflict through direct negotiations or mediation, the effort and expense of the mini trial may be wasted (Billings, 1990).
- If unsuccessful, time spent at the mini trial will have delayed resolution that can be reached through adjudicative proceeding.
- Such as arbitration or trial (except if the procedure continues like an arbitration in case of a deadlock or impasse), the trial-like nature of the preparation and hearing may continue to polarise the positions of the parties rather than promote an atmosphere of cooperation from the outset (Arndt, Blog & Frie, 2002).

2.12 Chapter Summary

This chapter illustrates alternative dispute resolution methods, their importance, benefits and drawbacks, problematic areas of those methods which are practiced in the construction industry and use Mini Trial as an additional ADR method in the construction industry to address those problematic areas with the help of existing literature. Even though many researchers have explored ADR methods, very few of them have given their attention towards mini trials. Due to this avoidance, current construction industry is experiencing difficulties to overcome disputes, especially technical wise, without having a proper resolution method to address the same in a more appropriate manner.

3.0 RESEARCH METHODOLOGY

3.1 Introduction

Methodology is a systematic strategy to conduct research to obtain relatable results in an effective approach (Frankfort-Nachmias & Nachmias, 1996). This chapter explains the research methods adopted in this study. The research process has planned to consist of two stages. The first stage involves literature review. The second stage consists of semi structured interviews with a combination of open ended and closed ended interview questions. Proper data collection and advanced methods to analyse data are important to achieve a worthy outcome of the research. Finally, it discusses research stages in detail, including methods of data analysis employed for the research and validation of methods.

3.2 Background of Study

This initial study reveals that researches have been carried out on the usage and assessment of ADR methods practiced in the industry as well as other ADR methods used in other countries which are suitable to adopt for Sri Lanka. According to the findings of the initial study, the aim of the research has been decided, to investigate the applicability of "Mini Trial" as a suitable alternative dispute resolution method for Sri Lankan Construction Industry to make the alternative dispute resolution more effective and viable system.

However, limited research work has been carried out to identify the users' perspective, issues and problematic areas relating to the ADR methods due to unavailability of resources and expertise in the industry. Thus, a more extensive literature review has been undertaken to attain some of the objectives such as, reviewing ADR methods practice successfully in the global construction industry, identifying problematic areas of ADR methods which used in Sri Lankan construction industry and examine the benefits and drawbacks of mini trial compared to other ADR methods practice in Sri Lanka, relating to the research and moreover with relevance to the Sri Lankan context.

After the identification of research problems, a comprehensive literature review has been conducted to explore the legal and regulatory framework of ADR methods and connected issues of the research. The literature review was carried out mainly referring to textbooks, statutes, case law, standard documents of ICTAD and FIDIC and research articles. Accordingly, in the literature review further attention was focused on research publications by key authors and journals which are in the study domain. The broad research topics that were addressed during the literature review were construction disputes, dispute resolutions, ADR methods and connected issues in ADR methods, other ADR methods using successfully in other countries, adopt such successful methods to Sri Lankan industry as a precaution for ADR methods in use.

3.3 Research Design

When intending to get a particular objective through an exploration, following an efficient methodology as a technique by directing a logical report can be recognized as examination plan (Yousaf, 2018). This exploration has been planned rendering to implanted blended strategy, as indicated by a particular stream including a careful foundation study, a basic audit of writing, an essential subjective study with specialists in the business to verify writing discoveries and control headings of the examination, an itemized talk with overview for subjective information assortment with the assistance of open and close finished survey, an exhaustive investigation with an inside and out conversation of examination discoveries and an end with pith of the whole exploration prompting suggestions for future investigations.

3.4 Research Approach

Research approach can be described as the selection of a method to obtain required data measurement in order to address aims and objectives. This includes strategies, procedures or techniques applied in data collection or gathering of proof for a thorough analysis in order to reveal latest updated information or generate improved perception of the topic (Research Guides, 2019).

There are three ways of studies approaches. Those are qualitative research method, quantitative research technique and mixed approach research technique. With accessibility of relevant data availability to the research and the purpose of the studies the approach should be selected for the analysis (Research Guides, 2019).

3.4.1 Research Approaches in General

- Quantitative Research Approach.

  This method required gathering of numerical data which can be ranked, measured or categorised through statistical analysis. It assists with uncovering patterns or relationships, and for making generalisations. This type of research is useful for finding out how many, how much, how often, or to what extent (McCombes, 2019). This method was identified as one of the most appropriate methods to apply for data gathering.

- Qualitative Research Approach

  Meetings, diaries, perceptions and chronicles of life go under a subjective information assortment process. The information introducing in this examination type include in a verbal development and the portrayal potentially come as encounters, feelings, sees, implications, questions, and from multiple points of view. This technique can be more abstract in nature than a quantitative strategy. The analyst can introduce the meeting in a social point of view way when utilizing subjective information investigation. Be that as it may, quantitative examination requires progressively tight viewpoints from the interviewee (Naoum. 2007).

- Mixed Method Research Approach

  This method can be identified as a combination of both qualitative method and quantitative method. It provides a universal approach merging and exploring the statistical data with thorough and deeper contextualised perceptions. Applying mixed methods approach also allows triangulation, or verification, of the data from two or more sources (Research Guides, 2019).

3.5 Selection of a Suitable Research Approach

It is possible to apply available knowledge of experts and resources to collect primary data towards a deep and a thorough study of the research topic. .By considering the research aim and objectives, both quantitative and qualitative approaches adopted this study. Embedded mixed methods designs, has been identified as most appropriate design.

3.6 Data Collection Techniques

Considering an appropriate information assortment method before concluding an examination technique can be distinguished as an essential need of an exploration. As indicated by Puckett (2018), there are four strategies have been depicted as information assortment procedures. Those are, perceptions, overviews or polls, meetings and center gatherings. Further, interviews have been distinguished as the most appropriate method as the questioner can grab most recent and refreshed data in an increasingly exploratory way, face to face.

3.6.1 Methods of Interview Structures

There are three main methods of interview structures (Naoum, 2007)

- Structured interviews

  The structure of questions is similar in each and every letter. The formation cannot be changed in structured type of interviews. Same questionnaire has been given to all interviewees. This type can be used in surveyors in substance.

- Semi-structured interviews

  In semi-structured interviews, it is not required to locate the structure or the order of the questionnaire. As per the objectives of the dissertation the formation of questions should be in a similar appearance in every interview.

  The interviewer can gather more details by adding more questions to the questionnaire. Relationship or the connection between interviewer and interviewee is much higher in this particular method.

- Non-structured interviews

  There is no formation or a particular structure for these types of interviews. The interviewer presents questions according to answers received from the interviewee. Even the interviewer does not have an exact concept about the question to be asked afterwards.

3.6.2 Data Collection Techniques Adapted

By considering available low amount of resources and low volume of existing experts towards mini trial, research strategy has been finalised as a semi structured interview with open ended and closed ended questionnaire under survey design. All the questions have been consolidated by consulting an experienced veteran construction industrial expert and three veteran industrialists have been chosen to participate in interviews due to unavailability of experts in mini trial. These interviews have been conducted according to both purposive sampling and snowball sampling.

Objectives of interview questions towards analysis are as follows.

1. Identify types of ADR methods currently practicing in Sri Lanka.
2. Discover problematic areas of ADR methods practicing in the Sri Lankan construction industry.
3. Uncover core features of mini trial with a comparison towards other ADR methods.
4. Understand advantages and benefits of mini trial equated to other ADR methods
5. Identify drawbacks of currently practicing ADR methods compared to mini trials.
6. Identify possibilities of mini trials to be adopted as the most appropriate ADR method for Sri Lankan construction industry.

The interview guide, which was used during the data collection, is given in Appendix - 1

3.7 Data Analysis Techniques

Secondary data has been presented as a support for the primary data analysis. For primary data gathering a semi-structured interview has been conducted by presenting open-ended and close-ended questionnaires to improve the accuracy and validity of the data assembled. All interviews have been carried out face to face and recorded with permission of the interviewee to prepare the summary for primary data analysis. Raw data of the interview have been summarised as a transcript and presented in an applicable behaviour. Information from the transcript briefed into key points for the main analysis. These key primary data have been presented in tables as visual aids for a clear observation and all the tables which present close ended questions prepared highlighting total weighted mean average for higher accuracy. Manual content analysis also used to analyse qualitative data. While describing the embodied information, secondary data also will be considered as evidence according to the requirement. To demonstrate accuracy of the assembled information, secondary data acted in favour of primary data. Variations of each interview have been observed easily with the aid of tables.

3.8 Chapter Summary

The initial purpose of the research methodology chapter is to express the layout or the design of the research, approach of the research, strategy following to obtain the aim of the research and present the data collection techniques in a more explanatory way by highlighting the process to achieve primary aim and objectives of the research. Additionally, by clarifying background investigation or the background study of the research and by explaining the review of existing literature, it simplified more to understand the essence of the research aim and objectives.

4.0 DATA ANALYSIS AND RESEARCH FINDINGS

4.1 Introduction

This chapter discusses the data analysis and research findings process in detail. It also describes issues concerning limitations in data collection while following the chosen procedure for information gathering. Further, it presents information about interviewees to clarify their reliability to participate in this research. An analysis was performed with a combination of three interviews, conducted in two stages.

Overview of Data Collection

After thorough research towards finding appropriate interviewees, the interviews had to narrow down to three, due to low awareness towards mini trials among professional construction industrialists. The primary step of the selection process was to follow up professional institutions, professional organisations, and a panel of lecturers of the construction law and dispute resolution MSc programme to find compatible construction industrialists as interview participants. Despite the considerable number of professionals who are directly involved in dispute resolution, finding professionals with a thorough awareness of mini trials was difficult.

The primary requirement was to interview professionals to include the most involved categories in the construction industry, such as consultants, contractors, and clients towards obtaining their valuable overview and comments out of their own picture. Even though only three interviews were held, the above-said areas reasonably covered the expertise and experience of the interviewees.

Every question was prepared after consulting a vastly experienced veteran who also participates as an interviewee, and with a proper understanding of the mini trial and other dispute resolution methods and local and international construction industry. This ensured a successful and productive outcome with minimum resources, due to the lack of experts in the industry on mini trials. All questions are based on current concerns in the construction industry towards alternative dispute resolution in Sri Lanka.

Every question directs to implement a successful and effective alternative method for dispute resolution with a positive effort to overcome most ambiguities in ADR methods currently in practice. Semi-structured interviews were conducted with three experts who had experience in mini trials, as presented in Table 4.1.

Table 4.1: Profile of Interviewees

	Designation	**Educational Qualifications**	**Professional Qualifications**	**Experience**
Interviewee 1	Managing Director of a Private Construction Consultancy Firm	● BSc in Architecture ● PhD in Construction Law & Dispute Resolution	● Chartered QS (IQSSL, RICS, AIQS) ● Chartered Architect (RAIA, SLIA) ● Project manager (IPMSL)	More than 45 years in Sri Lanka, Australia, and the Middle East
Interviewee 2	Attorney-at-law, Educator, and Human Rights Advocate	● Bachelor of Laws (LLB) ● Master of Laws (LLM) ● PhD in Law	● Senior Lecturer (Sp. In Construction Law & Dispute Resolution)	More than 35 years in Sri Lanka and Overseas
Interviewee 3	Attorney-at-law and Consultant/ Advisor for a leading Legal Firm	● Bachelor of Laws (LLB) ● Master of Business Administration (MBA) ● Master of Arts (MA)	● Lecturer (Sp. In Construction Law & Dispute Resolution, Commercial & Construction Arbitration)	More than 25 years in Sri Lanka

4.2 Selection of Currently Practising ADR Methods to Consider

A method was followed when considering the internationally recognised ADR methods, before the evaluation, to obtain the maximum outcome. Here, each ADR method considered must be marked as "Fairly Using" at least once by an interviewee for a productive result. As per the analysis, scored percentages of the selected methods are as follows. The selection of techniques has been presented in Question 1.

Question 1 identifies ADR methods considerably practised globally in the Construction Industry. Literature findings formed the basis to choose such ADR methods. The interviewees then expressed their perception on the awareness of the technique and its procedure of ADR methods under the category mentioned above. Table 4.2 presents the studied methods.

Table 4.2: ADR methods practised globally in the Construction Industry

	1 – Don't Know 2 – Not Using 3 – Fairly Using 4 – Considerably 5 – Vastly Using					
	ADR Method	Int. 1	Int. 2	Int. 3	Total Weighted Mean Average	Rank
1	Negotiation	5	5	5	5.00	1
2	Mediation	4	3	4	3.67	2
3	Conciliation	3	3	4	3.33	3
4	Med-Arb	1	2	1	1.33	4
5	Mini Trial	3	4	3	3.33	3
6	Adjudication	4	3	4	3.67	2
7	Arbitration	4	3	4	3.67	2
8	Summary Jury Trial	1	2	1	1.33	4
9	Judicial Appraisal	1	1	1	1.00	5
10	Project Neutral	1	1	1	1.00	5

1st, 2nd, and 3rd ranks were selected for the analysis since a method must be at least mentioned as 'fairly using' to be considered for the evaluation.

Accordingly, Negotiation, Mediation, Conciliation. The Mini trial, Adjudication, and Arbitration were selected because they scored above the minimum considered score levels.

4.3 Problematic Areas of Current ADR Methods in Sri Lankan Construction Industry

When assaying possibilities to adopt a new ADR method to any industry, identifying and evaluating problematic areas of currently practising methods have significant importance. For the construction industry, a face to face interview with veteran experts helped to identify such issues to avoid negative consequences after adopting the new method.

According to interviewees 1 and 2, one of the major problems is the absence of a time limit to settle these disputes, and the process is dragging for months. Even though every statement has been recorded, due to long breaks between each hearing, everyone needs a flashback of previous hearing and some points can be lost in the past without contemplating. According to interviewee 3, there is a higher possibility that the parties involved can lose their interest and forget the real importance and value given in earlier stages to resolve those disputes due to the time-consuming nature.

All three interviewees stated that the dissatisfaction with current arbitration practice due to its perceived complexity, deliberateness and expensiveness is getting higher. The major reason, according to them, is the shortage of professionals, and the requirement increases every year. One of the primary reasons for that particular issue is that there is no encouragement for any construction professional to join the dispute resolution system. They pay their attention and start doing the background studies about ADR after they get into that situation. According to interviewee 3, as a country which had a massive construction boom, the knowledge towards dispute resolution is a must for any professional involved. It must be open to the world to grab other convenient, realistic, and practical options.

Three interviewees shared similar opinions on popularity and awareness regarding ADR methods in Sri Lanka. According to them, mistrust and uncertainty towards the final decision or the award and duration of the process drive people away from these ADR systems. Secondly, unawareness makes the mistrust more virulent. Because of these reasons, people still trust litigation, despite the difficulty of reaching the final decision stage. Interviewee 2 pointed out that another issue towards mistrust is the partial behaviour of the chairperson of the panel or the hesitant conduct of impartiality of the procedure. To conclude the point, interviewee 1 mentioned that there is a reasonable hesitation on whether these kinds of performance in Sri Lankan construction industry indirectly entertain litigation. Frequently, even though the intention is purely facing towards dispute resolution, it appears as otherwise.

Interviewee 3 highlighted that Sri Lanka is still a developing country, and even though the construction boom was at a higher level, the journey has started recently. Hence, it still needs time to get into a stable place. Separating the construction industry from other industries is unrealistic. Because of the same, even though construction in Sri Lanka is in a more advanced position, development and advancement of other sectors directly affect the construction industry. Due to the above reason, even though the performance of the construction industry is high, it is not clearly visible. This issue directly affects the level of satisfaction, poor proceedings, and low outcomes of the ADR system.

Opinion towards partnering or dispute avoidance was similar between all three interviewees. They have pointed out that even the Sri Lankan construction industry is well built with contract documents and successfully follows standards. Still, some loopholes need to be covered, and one of the essential points is dispute avoidance. Though there are dispute avoidance clauses indicated in contract documents, it needs a suitable way of expressing the importance, value, and the use of having it on the document to get the real benefit out of the same.

When considering multi-party arbitration as a significant cost-saving option, interviewee 1 and 3 expressed that Sri Lankan construction industry is still not advanced to reach the level to resolve disputes within a multi-party atmosphere.

Interviewee 2 conveys the opinion towards the same as construction industrialists are much more concerned about disclosing their issues to the industry from multi-party arbitration rather than saving money. This shows, even having cost-effective methods, they have their drawbacks and consequences, which are not in favour of the parties involved.

All three interviewees share a collective judgement about the cost of ADR methods. Even though it has been implemented to become cost-efficient, the cost increase is much higher during the past years. Due to the same, a major cause is that one of the primal purposes of implementation has appeared as it has forgotten its roots. Another reason is higher demand against the fulfilment of the requirement. With the higher demand, knowingly or unknowingly, industrialists turned the situation into a profit gaining state, and it appears as a lucrative business. These kinds of cases can be developed into a 'monopoly' condition, and reasonable facts are gathering towards uncertainties for the same.

Interviewee 3 highlighted another problem; even though the Sri Lankan construction industry is up to date with new amendments of international standards, without a doubt, the same must have an open vision about ADR methods. Sometimes, there may be more relevant, more suitable, and more convenient ADR methods which can exist in Sri Lanka. However, if the industry is neither looking for those nor open to those, the industry will not obtain any benefit. Interviewee 2 brought up a mini trial as the finest example to show such methods. Rather than following the flow, being open to such globally successful methods can make ADR procedure smooth and convenient.

As the latter part of the above, interviewee 1 pointed out that choosing the most convenient ADR method depends on the issue, situation, type of work, expectations towards the solution, and many more. There are certain situations that ADR is not applicable as the dispute resolution method. This clearly shows ADR methods are not universal applications in resolving all kinds of construction disputes; for some disputes, dispute resolution methods must be litigation.

4.4 Core Features of Mini Trial Compared to other ADR Methods

The next step was the identification of the core features of a mini trial, which affects other ADR methods. The selection was conducted by ranking from a point-based method (1 – Very Low; 2 – Low; 3 – Fair; 4 – High; 5 – Very High), and to be stated by considering factors such as those effective to ADR methods used in the construction industry in Sri Lanka. The score of each factor is shown as Total Weighted Mean Average (TWMA). Table 4.3 presents the factors considered.

Table 4.3: Core features of mini trial compared to other ADR methods

	Core Features	Negotiation	Conciliation	Mediation	Adjudication	Mini Trial	Arbitration
1	Time duration required for the process (Required time duration for proceedings is low)	3.67	3.00	3.33	3.00	4.00	3.00
2	Cost-effectiveness of the process	4.33	3.00	3.33	3.00	4.00	3.00
3	Party autonomy Parties can control the procedure)	4.33	3.33	3.33	3.67	4.67	4.00
4	Preservation of relationship between parties	3.00	3.00	3.00	3.67	4.33	3.67
5	The flexibility of the procedure	4.00	2.67	2.33	2.67	4.00	2.33
6	Confidentiality of the process	1.67	3.00	2.67	4.00	4.67	4.67
7	Enforceability and the binding nature of the decision or the award	1.67	3.33	3.00	4.00	3.67	5.00
8	Decision maker's freedom on proposing a creative remedy (win-win solution for parties involved)	1.33	2.33	2.33	4.33	4.33	3.33
9	Experts involvement	2.33	3.33	3.33	3.33	4.67	4.33
10	Involvement of authorised personnel for decision making	1.00	2.00	1.67	3.00	5.00	3.67
	5 – Very High 4 – High 3 – Fair 2 – Low 1 – Very Low						

Keeping Table 4.3 as a source, and by considering most scored in sub-question 1, interviewee 2 expressed that even though negotiation gained a high score in second place, the stability of those two different methods, mini trial and negotiation, are enormously diverse to each other in every possible way. While negotiation is the most elementary method which has no limitations or boundaries, mini trials carry time duration or maximum time duration for the procedure as a principle. Similar to the above point, cost-effectiveness, sub-question 2, interviewee 1 clarified as even though negotiation is cheaper, none can estimate nor set the budget for bargaining. However, a mini trial has a proper setup, and thus, generating an estimate for expenses is 'cut and dry.'

Interviewee 3 emphasised that even every ADR method has party autonomy in their limits, the most efficient controlling procedure comes with mini trials, because parties involved can even control the venue, duration of each hearing, and dates for an upcoming hearing. This kind of arrangement makes the procedure convenient for all parties involved and shows a highly flexible nature of the system.

According to all three interviewees, decision making in a mini trial is more efficient than other ADR methods due to the involvement of higher management and/or authorised persons. Such persons do not want to destroy their reputation with unprofessionalism. Hence, the parties involved take maximum effort to keep their issues which are going through mini trials in a highly confidential manner. Unlike court trials, no one from the outside will be granted permission to attend mini trial hearings, and there is a limited maximum number of participants from each side for representing their party. Interviewee 2 mentioned that if both parties expect to keep their issues highly confidential, they can sign a nondisclosure agreement with people involved during the hearings. This form of confidentiality can serve multi-party disputes in a highly appropriate manner than other ADR methods.

Another positive fact towards the involvement of higher management is that, even though they are going through some issues in one particular contract, the relationship they had or the ties they maintain in managerial level is more professional and accountable. As responsible bodies, no one from either party is willing to ruin the

same, because it takes a long time to build up that kind of strong good-faith relationships, especially between parties involved in the same industry; maintaining such links is crucial because it can be damaged even with a simple fault.

Chairman, as the neutral decision-maker, has satisfiable freedom on proposing a creative resolution for both parties. According to interviewee 2, the chairman always offers solutions that can bring both parties to a win-win situation. Unlike mediator or conciliator, the chairman carries a much higher responsibility towards a better solution. If both parties do not agree, they still can continue with the process until obtaining a satisfactory solution for both parties within the time duration. According to interviewee 1, the power that is vested in the chairman of the mini trial is more convenient than arbitration. Contrasting to mini trial, if the chairman is biased to a party or unacceptably conducting the process, the other party must prove those facts and request to appoint another chairman.

According to all three interviewees, one of the most important positive facts in the mini trial is that enforcement of the decision or the award is much more successful than any other ADR method. Due to the involvement of authorised bodies, after the decision or the award is made, both parties can prepare a combined agreement at the same time and enforce it immediately. Even though a mini trial goes under non-binding ADR methods, it can be the most conveniently binding method above all other ways. Interviewee 2 stated that, even in arbitration, after the decision or the award is made, situations may occur in which those decisions had to be revoked due to nonagreement towards the award by authorised personnel or higher management, who has the right to enter into a contract or an agreement. Mini trial is not threatened with such incidents due to the involvement of the authorised personnel for decision making, and hence, they can enforce the award without hesitation.

4.5 Benefits of Mini Trial

Question 3 has been structured by considering expert opinion and literature findings to identify the advantages of ADR methods practising across the world. The scoring

technique was the same as Question 2, a point-based method with 15 sub-questions included. Factors that have been considered are as follows:

Table 4.4 shows the scores of each ADR method recorded towards consideration of the advantages of the same.

Table 4.4: Benefits of mini trial

	Benefits	**Negotiation**	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
1	Fair and genuine neutral decision	2.33	3.00	2.33	4.00	4.33	4.00
2	Parties' autonomy	4.00	3.33	3.67	3.33	4.67	4.00
3	Finality and reliably enforced	1.33	3.00	3.00	3.67	4.00	5.00
4	Confidentiality	1.67	3.33	3.67	3.33	4.33	4.33
5	Simplicity of procedure	4.67	3.00	3.00	2.00	3.00	1.67
6	Involvement of experts	1.67	3.00	3.00	4.00	5.00	4.00
7	Expeditious (low time duration and savings in time)	4.00	3.00	3.00	2.67	4.00	2.33
8	Economic (Save legal costs)	4.67	3.67	3.33	3.33	4.00	3.33
9	Less formal and simple	4.33	3.00	3.33	2.67	3.33	1.33
10	Flexibility of procedure (voluntary procedure)	4.00	2.33	3.33	2.00	3.67	2.00
11	Preservation of relationship and lack of animosity	2.33	3.33	3.00	2.33	4.00	3.67
12	More creative solutions	2.00	3.33	3.00	3.00	4.00	3.67
13	Suitability for multi-party disputes	1.33	2.67	2.67	2.67	4.67	1.67
14	Discovering nature of issues	2.00	3.00	3.33	2.33	5.00	3.33
15	Influence of managerial level	1.00	2.00	2.00	2.67	5.00	3.00
	5 – Very High 4 – High 3 – Fair 2 – Low 1– Very Low						

Apart from the facts discussed under Question 2, there are some additional valuable ideas regarding mini trials pointed out by all three interviewees under Question 3 as the highest scored ADR method. The economic nature comes on top for whoever is involved in any type of ADR method when considering the most important advantage. With the massive expenses involved in construction projects, no one wants to end up having additional costs towards any purpose. However, dispute resolution can be acknowledged as a critical situation in any project, and without any resolution, sometimes the project cannot progress further. Due to the less time duration for completion of the mini trial process, the possibility is high to overcome such economic concerns in the construction industry by using the said method. Because there are no legal expenses, this is highly beneficial for parties who are involved in the mini trial process.

When discussing flexibility of the procedure or voluntary procedure, according to interviewee 3, mini trial conveys the most convenient system out of all ADR methods. Place of the hearing and starting time and duration of each hearing will be decided by parties involved in the process. Appointment of the chairman is also a combined decision of those parties. Such flexible nature cannot be experienced in any DR methods other than mini trial.

According to interviewee 2, discovering the nature of the mini trail is a highlight to the procedure. Understanding the sides of both parties in their own words can make a noticeable difference to any person involved in the process. It helps to identify the opposition party in their point of view rather than making assumptions of the same. Interviewee 1 added that, due to such trial like nature, the foundation of the process would become stable, and the actual need of dispute resolution will be emphasised.

4.6 Drawbacks of other ADR methods Associated to Mini Trail

Overcoming its drawbacks is vital to improving the beneficial side of ADR methods. Before taking actions to overcome those, identifying the same is a must. Literature has provided ten disadvantages of ADR methods, and experts were asked to rank each drawback compared to mini trial, using 1-5 Likert scale where 1 – Very High; 2 – High; 3 – Fair; 4 – Low; 5 – Very Low. Table 4.5 illustrates the results. (The

following has been clarified to minimise the possibility of misunderstanding the table of disadvantageous nature of mini trial).

e.g. –

1. Higher awareness of the method and its procedure

Accordingly, if the sub-question obtained higher points, it expresses that awareness of the method and its procedure is at a higher level. That implies the disadvantage factor is at a lower level.

2. Low-cost procedures

If the point cost procedure scored high in points, the advantage factor is high.

3. High concentration on technical issues

If the sub-question 6 scored higher points, it implies that the disadvantageous factor of the same is very low. That indicates the advantages side is high compared to drawbacks.

Table 4.5: Drawbacks of ADR methods

	Drawbacks	**Negotiation**	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
1	Higher awareness of the method and its procedure	5.00	2.33	3.67	3.00	1.67	3.67
2	Low cost procedures	4.67	3.00	3.00	3.00	3.33	2.67
3	Less involvement of lawyers	1.00	3.67	2.67	3.00	3.67	3.67
4	High preservation towards confidentiality of information	2.00	3.00	3.00	4.00	4.00	4.00
5	Set time limit for settlement of disputes	2.00	2.33	1.67	1.67	5.00	1.67
6	Higher concentration on technical issues	2.00	2.33	1.67	2.00	5.00	2.00
7	High transparency	2.00	3.33	3.00	3.00	4.67	3.33
8	Higher adversarial Process	2.00	3.00	3.00	3.33	4.67	4.00
9	Formal and simple	3.67	3.00	3.00	2.00	3.00	2.00
10	High experience in handling issues	2.67	3.00	3.00	3.67	4.33	4.33
	1 – Very High 2 – High 3 – Fair 4 – Low 5 – Very Low						

4.7 Where Mini Trial Stand Among other ADR Methods

Table 4.6: Average means of ADR methods in each category

Table	Average mean of ADR methods in each category					
	Negotiation	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
Core Features	2.73	2.90	2.83	3.40	**4.33**	3.70
Benefits	2.76	3.00	3.04	2.93	**4.20**	3.08
Drawbacks	2.73	2.90	2.70	2.90	**3.93**	3.13

Table 4.6 shows the average mean obtained by each ADR method in the primary data analysis process. According to the table, the mini trial has scored the highest points out of all other ADR methods considered for the analysis.

Furthermore, the following statement made by Mix (1997), which is also mentioned in the literature review chapter, provides a clear view of Mini Trial and explains where Mini Trial stands among other ADR methods.

Mini trials are private, nonbinding proceedings in which the parties may agree to present their "best case" in summary form, usually through their attorney, to a panel of top management representatives who are not involved in the dispute. Thus, several ADR alternatives to arbitration are available to construction industry participants; these alternatives may prove more suitable to the construction industry than either traditional litigation or arbitration procedures.

With the analysis of primary and secondary data, mini trial stands remain on top compared to other ADR methods.

4.8 A Mini Trial Method to Adapt in Sri Lankan Construction Industry

After a thorough and in-depth study, a few significant factors were identified as genuine requirements expected from any ADR method. Different procedures have been followed when gathering sources for the study, and mostly it was based on the literature generated by previous research studies and journal articles. All findings were presented to an experienced veteran in the industry for valuable feedback towards the advancement of the findings, to fulfil the requirement effectively. Facts revealed from the study are as follows:

1. Fair and genuine neutral decision
2. Parties' autonomy
3. Finality and reliably enforced
4. Confidentiality
5. The simplicity of the procedure
6. Involvement of experts
7. Expeditious (low time duration and savings in time)
8. Economic (Save legal costs)
9. Less formal and simple
10. The flexibility of the procedure (voluntary procedure)
11. Preservation of relationship and lack of animosity
12. More creative solutions
13. Suitability for multi-party disputes
14. Discovering the nature of issues
15. Influence of managerial level

Above mentioned facts have been considered under question 6, subordinate to the title of 'suitability to adopt an additional ADR method as an alternative to the Sri Lankan construction industry.' The highest scoring method was Mini Trial for all three methods, with a score of 193 points out of 225.

Session two of the interview commenced, based on the results for Question 6. The attempt of session two was to figure out the potential solutions to overcome existing issues of currently practising ADR methods by using a mini trial.

All three interviewees shared the same idea toward mini trial when explaining the method with its appropriateness as an ADR method. Interviewee 2 illustrated that mini trial is one of the most successful ADR methods, considering the countries which use this system. According to interviewees, the mini trial carries a successful format since most industrial-wise developed and advanced countries use the same for construction. The United States of America (USA) comes first, according to interviewee 1, and other countries such as the United Arab of Emirates (UAE) and some well-established countries in Europe are not much behind the USA. Interviewee 3 mentioned that India is currently turning rapidly towards mini trial due to its reputation. According to all three interviewees, if most leading construction industrialists adopt mini trial, it will spread fast even to other countries due to its productive nature.

All facts identified under 'genuine requirements expected from any ADR method' can be considered as advantages of the mini trial method.

The mini trial system carries two considerable drawbacks. The first is the unawareness and unfamiliarity by the higher management participants towards the dispute. Even when considering the same, it will not fall under a drawback of mini trial but as an internal issue of the involved parties—secondly, the non-binding nature of this method. Still, according to the specialist interviewees, non-binding nature can be turned as a driver towards mini trial because a quality mini trial gives the vibe as a simple but elegant dispute resolution method. Most industrialists, especially contractors, nowadays do not presuppose comfort with more responsibility by solitarily having a binding contractual clause such as arbitration. Adding a mini trial clause into the same contract as a non-binding clause can slacken the pressure from them towards agreeing for the contract conditions. So, according to interviewees, mini trials can be included in the contract as a clause under dispute resolution similar to an arbitration clause which can come up to the action at first before arbitration takes place even after the main contract becomes null and void. After settling the dispute, both parties can agree to sign a mini trial agreement and not take the dispute or any ruins further.

Disputes have two types as *factual disputes* and *verbal disputes* (Batuhan, No Date). To the question, 'Will it help introduce a mini trial to resolve factual disputes in the industry?' interviewee 2 and 3 provided a similar answer— "the mini trial can be identified as the leading dispute resolution method that can support to resolute factual disputes, which is the most difficult type of disagreement in any kind of arguments."

To the same, interviewee 1 added that every technical dispute is bounded with facts. Consequently, factual and technical disputes cannot separate from each other. The literature review identified that mini trial could be the best option for technical disputes. Any case can be resolved with facts by realistically proving the same. Similarly, in the construction industry, as one of the leading sectors that carry the highest number of technical and factual disputes in Sri Lanka, mini trial can be a silver lining to technical and factual dispute resolution processes.

Consideration the development of a dispute management mechanism along with mini trial, interviewee 1 pointed out three possible fruitful advantages happening due to the same in a positive manner. First, the management staff will pay their attention to dispute information when planning, improving quality, and when informing professional development. Secondly, the interviewee expressed that senior management would receive prompt notifications regarding all disputes with significant or severe risks. Finally, the idea of the interviewee was, policies and practices regarding dispute management will be reviewed regularly along with stakeholders to ensure the effectiveness and will reach a higher state than the usual.

With the anchor of the specified time frame in a mini trial, interviewee 2 stated that other ADR methods would get the same influence and act accordingly to provide a better and fruitful outcome in the future, compared to mini trial. By these types of changes, according to interviewee 1, ADR methods that are currently in practice in Sri Lankan construction industry will be more efficient in time, cost, and scope, which will lead to productive and eminent results.

Interviewee 3 stated to clarify the concern towards availability of professionals and experts who can act as the chairman in mini trial proceedings by suggesting to address unawareness and uninterest towards dispute resolution, as there are many technically qualified construction professionals available to act in such positions.

4.9 Chapter Summary

After a thorough study following a successful data analysis with the help of three veteran industrial experts in construction, this chapter confirms that Mini Trial ADR method is one of the most suitable processes to be adopted to Sri Lankan Construction Industry. Moreover, the chapter discussed the facts for adopting mini trial as an ADR in the Sri Lankan construction industry.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter aims to conclude the research and provide recommendations by illustrating data collected and analysed in the previous chapter. Possible positive changes, including the adoption of "Mini Trial" ADR method, have been discussed as recommendations for ADR methods currently practising in the Sri Lankan construction industry. Furthermore, this chapter discusses the related limitations and further research directions.

5.2 Conclusions under Research Objectives

This research aims to "investigate the applicability of "Mini Trial" as a suitable alternative dispute resolution method for the Sri Lankan Construction Industry to make the alternative dispute resolution a more effective and a viable system." Three interviews were held with vastly experienced construction and dispute resolution professionals in Sri Lanka towards achieving the four objectives:

5.2.1 Review ADR Methods Practised Successfully in the Global Construction Industry

Towards achieving the first objective of the research, which is, identifying currently practising ADR methods and other alternative ADR methods, open-ended and close-ended questions were formulated following a thorough literature survey. As a result, the most popular ADR methods are as follows:

- Negotiation
- Mediation
- Conciliation
- Mini Trial
- Adjudication
- Arbitration

5.2.2 Identify Problematic Areas of ADR Methods Used in Sri Lankan Construction Industry

As the second objective to attain, identify problematic areas of ADR methods which are currently in use in Sri Lankan construction industry and the reasons behind such problems were addressed with a thorough literature review to obtain the background towards the topic and by conducting a semi-structured interview with vastly experienced construction and dispute resolution professionals. As per findings, the following areas have been identified under the topic.

- Unavailability of a time limit or a schedule
- Perceived complexity, deliberateness, and expensiveness especially in arbitration
- Mistrust and uncertainty
- Low level of satisfaction, poor proceedings, and low outcomes of the ADR system
- Unawareness of dispute avoidance techniques
- Risk of Development to a 'Monopoly' condition due to lack of expertise
- No open vision towards more efficient alternative methods which are practising globally

5.2.3 Examine the Benefits and Drawbacks of the Mini Trial Compared to other ADR Methods Practised in Sri Lanka

The third objective, which is to identify the advantages and disadvantages of mini trials by exploring different practices from other countries, has been accomplished by interviews conducted with experts in the dispute resolution industry. Both advantages and disadvantages have been analysed with a comparison to other ADR methods currently in practice. According to the findings, the benefits are,

- Fair and genuine neutral decision
- Parties' autonomy
- Finality and reliably enforced
- Confidentiality

- Simplicity of procedure
- Involvement of experts
- Expeditious (low time duration and timesaving)
- Economic (saves legal costs)
- Less formal and simple
- The flexibility of procedure (voluntary procedure)
- Preservation of relationship and lack of animosity
- More creative solutions
- Suitability for multi-party disputes
- Discovering the nature of issues
- Influence of managerial level

The disadvantages have been identified as,

- Unawareness and unfamiliarity by the higher management participant towards the dispute.

5.2.4 Improvements to ADR Methods by Using Mini Trial

The final objective of the research was to determine the required solutions and improvements to ADR methods by using mini trial for their efficient performance in resolving construction disputes. It can be addressed by adopting the mini trial's nature, qualities, and specialities, or by selecting the method itself towards witnessing an efficient ADR method. Table 5.1 presents some of the main disputes and their causative reasons, that can be addressed by using a mini trial method.

Table 5.1: Most concerning disputes and reasons behind such disputes

Dispute	Reason
Revocation of the award of decision	Minor involvement of the authorised decision-making party (Poor managerial involvement)
Dragging nature	No set time limits to conclude the procedure
Misunderstanding the opposition party	No platform to be informed by the opposition party itself
Poor decision-making towards technical issues	Poor understanding and poor discovering nature towards the issue
Poor confidentiality	No limited number of participants for a hearing
Low responsibility to resolve the dispute	Low influence of managerial level

5.3 Limitations

The scope of the research was to justify Mini Trial as an alternative dispute resolution method and identify solutions for current ADR practices in Sri Lanka through Mini Trial. Nevertheless, primary data collection was made from only three expert professionals, due to the lack of resource availability and unawareness of the method. Similarly, unavailability of adequate literature for a comprehensive literature review was another key difficulty that hampered secondary data collection.

5.4 Further Research Directions

As per the observation of the study, the following suggestions are made as more valuable and useful in further research:

- Research in problematic areas of alternative dispute resolution in the Sri Lankan construction industry.

Research on appropriate adjustments for mini trial when adapting towards Sri Lankan Construction Industry.

REFERENCE

Abbott , K.C. & Flanery, S.O. (1993). The Use of Minitrials in Mineral Disputes. *Chapter 9.* Retrieved from http://webcache.googleusercontent.com/search?q=cache:6sblO7zGjiMJ:www.emlf.org/clientuploads/directory/whitepaper/Abbott_93.pdf+&cd=1&hl=en&ct=clnk&gl=au.

Abeyaratne, S.D.B. (2006). Establishment and Organising of Commercial and Construction Arbitration Tribunal. *The Bar Association Law Journal of Sri Lanka*, 12(1), 84-90.

Abeynayake, M.D. (2008). Special Features and Experiences of the Construction Industry- Arbitration in Sri Lanka. *Proceedings from International Conference on Building Education and Research (BEAR), Salford (United Kingdom)*, 36(4), 1227-1236.

Abeynayake, M.D. & Dharmawardhana, B.C. (2015, August 20). Comparative Analysis of Adjudication and Arbitration Methods in Sri Lankan Construction. *The 4th World Construction Symposium 2015, Colombo*, 1(1), 162-169.

Abeynayake, M.D. & Weddikkara, C. (2012, June 28-30). Arbitration as An Alternative Dispute Resolution Method in The Construction Industry of Sri Lanka. *World Construction Conference 2012 – Global Challenges in Construction Industry, Colombo, Sri Lanka*, 1(1), 23-31.

Agarwal, V. & Oswasanoye, B. (2001, March). Alternative Dispute Resolution Methods. *United Nations Institute for Training and Research (UNITAR)*, 14(1), 1-27.
Assaf, S.A. Bubshait, A. Jannadia, M.O. & Naji, A. (2000, February). Contractual methods for dispute avoidance and resolution (DAR). *International Journal of Project Management*, 18(1), 41-49.

Bekele, A. (2005, July). *Alternative Dispute Resolution Methods in Construction Industry: An Assessment of Ethiopian Situation* (Unpublished master's thesis). Addis Ababa University, Addis Ababa, Ethiopia.

Blankenship, D. (2010). Steps of The Research Process. *Applied Research and Evaluation Methods in Recreation*. Retrieved from https://us.humankinetics.com/blogs/excerpt/steps-of-the-research-process.

Brooke, J. (2015, July 31). When You Can't Settle, Consider a Mini-Trial. *CEBblog™*. Retrieved from https://blog.ceb.com/2015/07/31/when-you-cant-settle-consider-a-mini-trial/.

Brooker, P. & Laver, A. (2010, October 21). Perceptions of alternative dispute resolution as constraints upon its use in the UK construction industry. *Construction Management and Economics*, 15(6), 519-526.

Caldwell & Kearns, P.C. (2017, December 14). What is A Mini-Trial?. *Protecting clients in the most complex legal disputes*. Retrieved from https://www.caldwellkearns.com/blog/2017/12/what-is-a-mini-trial.shtml.

Cengage, G. (2003). MINI-TRIAL. In *Encyclopaedia of Everyday Law* (Vol. 1, pp 7031-7201). Canada: Department of Justice.

Cheung, S.O. (1999). Critical factors affecting the use of alternative dispute resolution processes in construction. *International Journal of Project Management*, 17(1), 189-194.

De Zylva, E. (2006). Alternative Dispute Resolution systems for construction contracts. K. Kanagisvaran, & S.S. Wijeratne (Eds). *Arbitration law in Sri Lanka. Colombo*. Institute of Commercial Law and Practice (ICLP), Sri Lanka.

Devapriya, K. & Weddikkara, C. (2000). The Sri-Lankan Construction Industry in the New Millennium. *Challenges Facing the Construction Industry in Developing Countries*, 1(1), 1-10. Retrieved from http://www.irbnet.de/daten/iconda/CIB8976.pdf.

Doyle, M. (2012, June). Thinking about ADR?. *Why use ADR? Pros & cons - ASA guide*. Retrieved from www.asauk.org.uk/adr.

Frankelstein, W.A. (1994). ADR in Trademark and Unfair Competition Disputes. Section 5, Choosing an ADR Process.

Frankfort-Nachmias, C. and Nachmias, D. (1996) Research Methods in the Social Sciences. Fifth Edition, Arnold, London.

Gunasekara, S. & Rodrigo, A. (2015, October 01). Sri Lanka: embracing ADR. *FJ & G de Saram*, 1(1), 1-7. Retrieved from http://www.iflr.com/Article/3493553/Sri-Lanka-embracing-ADR.html.

Gunasena, K.B. (2010, February). Performance of Critical Attributes in Alternative Dispute Resolution (ADR): A Study in Sri Lankan Construction Industry. *SLQS JOURNAL*, 4(1), 42-48.

Herrman & Herrman, P.L.L.C. (2016, June 03). What is Mini Trial?. *What is a Mini-Trial? What is the Purpose of a Mini-Trial?*. Retrieved from https://www.herrmanandherrman.com/blog/whats-mini-trial/.

ICRA Lanka and IMaCS. (2011, September 15). Construction Industry in Sri Lanka. *Industry Report on Sri Lanka*, 1-3

Jayalath, C. (2015, December 27). Sunday Obeserver.

Jayasena, H.S. & Kavinda, Y.H. (2012, June 28-30). Most Appropriate Dispute Resolution Strategy for Sri Lankan Construction Industry. *World Construction Conference 2012 – Global Challenges in Construction Industry, Colombo, Sri Lanka*, 1(1), 180-187.

Jayasinghe, H.M. & Ramachandra, T. (2016, February). Adjudication Practice and Its Enforceability in the Sri Lankan Construction Industry. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 8(1).

Kleiner, B. & Mose, D. (1999). The emergence of alternative dispute resolution in business today. *Equal Opportunities International*, 18(1), 54-61.

Klitgaard, T.J. & Mussman, W.E. (1992, January). High Technology Disputes: The Minitrial As the Emerging Solution. *Santa Clara High Technology Law Journal*, 8(1), 1-19.

Korale, J.C. & Ranasinghe, A. (2011). Adjudication in Construction Contracts. *The Institution of Engineers, Sri Lanka*, 45(2), 73-81.

Korale, J.C. & Weddikkara, C. (2012, June 28-30). The Impact of Inclusion of Arbitration Clause by Reference in Main Contract and Subcontract Documents in The Construction Industry and its Negative Connotations. *World Construction Conference 2012 – Global Challenges in Construction Industry, Colombo, Sri Lanka*, 1(1), 202-208.

Marketing Management and Analysis. (2013, January 12). Retrieved from ayemyomyintaung.blogspot.com/2013/01/collecting-information-and-forecasting.html

Mayer, J. (1995, May). Mediation Works. *Dispute Resolution Journal*, 50(2), 1-4.

McCombes, S. (2019, June 13). How to create a research design. *Research Design, Types, Methods, and Examples*. Retrieved from https://www.scribbr.com/research-process/research-design.

Mohamed, A.A. Oseni, A.U. & Raji, B. (2015, April). Reforming the Legal Framework for Construction Dispute Resolution in Nigeria: A Preliminary Literature Survey. *International Journal of Business, Economics and Law*, 6(4), 88-95.

Naoum, S.G. (2007). Dissertation research and writing for construction students (2nd ed.).

Planterose, R. (2003). Adjudication. In J. Tackaberry, & A. Marriot (Eds), *Bernstein's handbook of arbitration and dispute resolution practice*, (477-532). London: Sweet & Maxwell.

Puckett, S. (2018, May 10). Data Collection Techniques. Retrieved from https://www.fulcrumapp.com/blog/field-data-collection-methods/

Rameezdeen, R. (2006, April 19). *Construction Sector in Sri Lanka*. Koggala Beach Hotel, Sri Lanka.

Rodrigo, A. (2019, July 25). Dispute resolution in Sri Lanka. *Lexology*, Retrieved from https://www.lexology.com/library/detail.aspx?g=eebc86ef-3934-43f1-8fe2-ccaab3eb46cf.

Sims, J. (2003). Construction industry arbitrations. In J. Tackaberry, & A. Marriot (Eds). *Bernstein's Handbook of Arbitration and Dispute Resolution practice*, (530-585). London: Sweet & Maxwell.

Smith, R.M. (2002). The Minitrial: An Alternative to a Lengthy Lawsuit. *MediatioNoW.com*. Retrieved from https://www.mediationnow.com/communal/Articles/robertsmith/article3.htm.

Treacy, T.B. (1995, January 01). Use of Alternative Dispute Resolution in the Construction Industry. *Journal of Management in Engineering*, 11(1), 58.

Yousuf, M. (2018). Get to know about Research Design and its types. *Research Design – Types of Research Design*, [Web log post]. Retrieved from https://scholarshipfellow.com/research-design-types-research-design/.

Zack, J.G. (1998). Resolution of Disputes — The Next Generation. *Construction Claims and Litigation Support Services, PinnacleOne, (formerly High-Point Rendel)*, 1(1), 1-8.

ANNEXURE

SEMI STRUCTURED INTERVIEW QUESTIONS

TOPIC – A STUDY ON "MINI TRIAL" AS A SUITABLE ALTERNATIVE DISPUTE RESOLUTION METHOD FOR SRI LANKAN CONSTRUCTION INDUSTRY

AIM

Aim of this research is to investigate the applicability of "Mini Trial" as a suitable alternative dispute resolution method for the Sri Lankan Construction Industry to make the alternative dispute resolution a more effective and a viable system.

Intend to elicit the background information of the respondent

General information about the respondent						
Name:						
Organisation:						
Type of organisation (Please tick **X** in relevant box)	**Contractor**		**Client**		**Consultant**	
Profession / Designation						
Working experience in the Construction Industry.						
Working experience in dispute resolution in the Construction industry.						

01 – Identifying ADR methods which are considerably practicing globally in Construction Industry

Please write your perception in related to awareness of the method and its procedure of following ADR methods.

1 – Don't Know	2 – Not using	3 – Fairly using	4 – Considerably	5 – Vastly Using

Note – If there are any other ADR methods them in the given space that you are aware of, please state

ADR Method	**Awareness of the method and its procedure (Method is known)**
Negotiation	
Mediation	
Conciliation	
Expert determination	
Med-Arb	
Mini trial	
Adjudication	
Arbitration	
Summary Jury trial	
Judicial Appraisal	
Project Neutral	
Neutral Evaluation	

02 – Identify factors which affects to ADR methods

Please select ranking from following scales and state by considering the following factors, how those effective to ADR methods using in the construction industry.

1 – Very Low	2 – Low	3 – Fair	4 – High	5 – Very High

Note – If there are other attributes relating to effectiveness of ADR please state them in the given space.

	Critical attributes for Effectiveness of ADR methods	**Negotiation**	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
1	Time duration required for the process (Required time duration for proceedings is low)						
2	Cost effectiveness for the process						
3	Party autonomy (Parties can control the procedure)						
4	Preservation of relationship between parties						
5	Flexibility of the procedure						
6	Confidentiality of the process						
7	Enforceability and the binding nature of the decision or the award						
8	Decision maker's freedom on proposing a creative remedy (win-win solution for parties involved)						
9	Experts involvement						
10	Involvement of authorised personnel for decision making						
13							
14							
15							

03 – Advantages of ADR methods practicing globally

Please select from following scales and state the advantages of ADR methods.

1 – Very Low	2 – Low	3 – Fair	4 – High	5 – Very High

Note – If there are any other advantages in ADR methods, please state them in the given space.

	Advantages of ADR methods	**Negotiation**	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
1	Fair and genuine neutral decision						
2	Parties' autonomy						
3	Finality and reliably enforced.						
4	Confidentiality						
5	Simplicity of procedure						
6	Involvement of experts						
7	Expeditious (low time duration and savings in time)						
8	Economical (Savings legal costs)						
9	Less formal and simple						
10	Flexibility of procedure (voluntary procedure)						
11	Preservation of relationship and lack of animosity						
12	More creative solutions						
13	Suitability for multi-party disputes						
14	Discovering nature of issues						
15	Influence of managerial level						
16							
17							
18							

04 – Disadvantages of ADR methods

Please select from following scales and state the disadvantages of ADR methods.

5 – Very Low	4 – Low	3 – Fair	2 – High	1 – Very High

Note – If there are any other disadvantages in ADR methods, please state them in the given space.

	Disadvantages	**Negotiation**	**Conciliation**	**Mediation**	**Adjudication**	**Mini Trial**	**Arbitration**
1	Awareness of method and its procedure						
2	Economical Cost procedures						
3	Involvement of Lawyers						
4	Preservation towards Confidentiality of Information						
5	Delay – Set time limit for settlement of disputes						
6	Concentration on technical issues						
7	Transparency						
8	Adversarial Process						
9	Formal and simple						
10	Experience in handling issues						
11							
12							
13							
14							
15							

05 – Problematic areas of current ADR methods in Sri Lankan Construction Industry

1. Some ADR methods (*Ex*- Conciliation and Mediation) are not binding the parties with the decision. Whereas Mediators/conciliators have no powers of enforcement or of making a binding recommendation. Do you find this as an issue?
2. Do you think the difficulty in separate conciliation and mediation from one another as a problem?
3. Even though mediation has unique characteristics, it is rarely practiced and less popular when compared to other ADR methods. Do you know the exact reason?
4. Dissatisfaction with current arbitration practice within the construction industry because of its perceived complexity, deliberateness & expensiveness is getting higher. Do you agree? Why?
5. Can you give a sensible reason why, multi – party arbitration is not available in construction industry?
6. ADR methods are not universal applications in resolving any kind of construction disputes. Can you explain why?
7. A major drawback is that there is no time frame to settle disputes. Can you explain why?
8. Mini-trials are most appropriate for factual disputes; however, mini-trials are not popular. Do you find this as a disadvantage?
9. Expert involvement towards ADR methods is comparatively low when considering the involvement of legal professionals. Can you explain why?
10. Why popularity and awareness of ADR methods is low in Sri Lanka?
11. Recently ADR methods have become expensive. Do you find any special reasons towards that?
12. Do you find the level of satisfaction of ADR methods, proceedings and outcomes are low?
13. Do you think dispute avoidance (partnering) is not used by parties to the contracts?
14. Do you find doubt in trustworthiness towards the impartiality of the procedure?
15. Do you think construction industry entertain litigation than ADR under the book?

06 – Suitability to adopt as an ADR method in Sri Lanka

Please select from following scores and state the disadvantages of ADR methods.

1 – Very Low	2 – Low	3 – Fair	4 – High	5 – Very High

Note – If there are any other factors of suitability in ADR methods, please state them in the given space.

	Advantages	**Mini – Trial**	**Summary Jury trial**	**Judicial Appraisal**	**Project Neutral**	**Neutral Evaluation**
1	Fair and genuine neutral decision					
2	Parties' autonomy					
3	Finality and reliably enforced.					
4	Confidentiality					
5	Simplicity of procedure					
6	Involvement of experts					
7	Expeditious (low time duration and savings in time)					
8	Economical (Savings legal costs)					
9	Less formal and simple					
10	Flexibility of procedure (voluntary procedure)					
11	Preservation of relationship and lack of animosity					
12	More creative solutions					
13	Suitability for multi-party disputes					
14	Discovering nature of issues					
15	Influence of managerial level					

Note - The format of face to face interviews will be structured according to the feedback of each interviewee regarding the above questions.

07 – Potential solutions to overcome existing issues of ADR methods by using Mini Trial.

1. How do you know about mini trial? What is mini trial?
2. Do you find mini trials as an appropriate ADR method to be adopted to Sri Lankan Construction Industry? Why?

If mini trials adopted to Sri Lankan Construction Industry,

3. According to your view, what are the advantages of mini trials?
4. What are the drawbacks that can be identified with your expertise in the industry?
5. How can be mini trials introduced to use in construction industry in future?
6. Will introducing mini trial helps to resolve factual disputes in the industry?
7. Is it possible to introduce dispute management mechanism to construction projects along with mini trials?
8. Is there any possibility to introduce time frame to ADR proceeding, starting from mini trials, towards settlement of disputes?
9. Do you think technically qualified construction professionals and experts are available to act as chairmen in mini trial proceeding if the method is adopted?
10. Do you find mini trials will help to resolve technical disputed similar as in other countries?