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COMPARATIVE ANALYSIS OF PROCEDURAL RULES IN NATIONAL AND INTERNATIONAL ARBITRATION

~ Twinkle Kumari

ABSTRACT

The understanding of International Law has only come into existence in the last 300 years starting by the inquisitive inquiry by a Dutch jurist, Hugo Grotius in his work *De jure belli ac pacis* (On Law of War and Peace) in which he emphasizes how 'Natural Law' is inevitable at the international front. In contrast the practice of Procedural law is in itself customary. Subsequently drawing the symmetric distinction on how conflict of law or of jurisdiction does not conform to the idea of proceeding being non-uniform at international and national level, and further inquiring upon the 'fundamentals' of Procedural Rules,[1] while discerning to the principles by rejecting 'due process of law' and 'procedural established by the law'[2] derived from common law and civil law systems respectively. These concepts give right against sovereign and legislative enactment, not applicable in arbitration. Furthermore elaborating on the genesis of how procedural law is in itself a substantive law.

INTRODUCTION

In the array of *Corpus Juris* international law continues to deal with the degree of obscurity in certain uncomprehend and not adjudicated matters, however International arbitration is an amicable means to resort disputes. The conflict which may arise out of Public and Private

[1] KOLB, Robert. General principles of procedural law. In: The statute of the International Court of Justice : a commentary. Oxford : Oxford University Press, 2006. p. 871–908. (Oxford commentaries on international law)

[2] Fortese Fabricio and Lotta Hemmi. "Procedural Fairness and Efficiency in International Arbitration | Groningen Journal of International Law." 3 (1) (2015): 110-124.

International law, either when two sovereign nations on the matter relating to bilateral agreement or by private individuals from different jurisdictions invoking arbitration clauses of contract in commercial dispute. To say national arbitration takes place within the boundaries of one sovereign nation is a misleading notion as the 'venue' of arbitration does not conform to be the 'seat' of the arbitration according to the New York Convention of(1958) which is implied on 168 countries.

The consensus among legal scholars on the understanding of procedural rules has an implied intrinsic nature that ensures fairness and impartiality to endure natural justice by eliminating personal bias while monitoring and regulating the judicial institution with ingrained administrative due diligence by retrospective approach.[3]

In practice, procedural law is in contrast with substantive law which does not dictate rights or liability but rather provides for remedy. The fundamentals of the procedure are to decipher the truth of the 'material fact' by the method of '*Audi Alteram Partem'*. However procedural rules have gradually developed over the period by establishing certain substantive elements in the administration of justice.[4]

The arbitration is a very flexible method for adjudication. It not just acknowledges the institutionalized method but also allows parties to resolve by ad-hoc method where they can choose their own procedural method or conform to the conventional one.

We have discussed the choice of law, choice of arbitration method. Now it is imperative for the parties to understand the nature of the panel, or rather how the proceeding will be conducted, be it by inquisitorial system or adversarial system, will the panel be actively investigating and gathering facts and evidence will parties be responsible for presenting their own evidence. Although the inquisitorial system is more proximate to the objectives of international law. [5]

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[3] Jindal Surbhi and Anunay Pandey. *Audi Alteram Partem and Nemo Judex In Causa Sua: The Two Pillars of Natural Justice*(2023) Manupatra <https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice> accessed 16 march 2024

[4] Millar, Robert Wyness. Civil Procedure of the Trial Court in Historical Perspective. United States, Lawbook Exchange, 2005.

[5] Zaki, Ahmed Galal. Adversarial or inquisitorial: which approach is closer to arbitration? . 2021. American University in Cairo, Thesis. AUC Knowledge Fountain. <https://fount.aucegypt.edu/retro_etds/2516> accessed 16 march 2024

Therefore, the comparison of procedural rule is based on procedural law jurisprudence at national and international level, by examining the rule of law within the compendium of procedure.

DICHOTOMY THROUGH ANALOGY OF PROCEDURAL RULE

In the vast horizon of land every nation has 'jus civile' extending its etymology to Roman law which first articulated the concept of civil law, which evolved by gradual practice which resulted out of customary practice through procedural refinement and common law as precedents.

Corresponding to this there is an institutionalized system of arbitration law based on 'UNCITRAL Model Law' which assists the formation of arbitration law both at national and international level, and subsequently 'UNCITRAL Arbitration Rule' which provide guideline for ad-hoc method of arbitration, an acknowledgment between parties to resolve disputes outside the court, on the matter relating to the conflict in contract and sought to the arbitration clause. Paradoxically parties could also challenge the arbitration award though it is binding.[6]

Consequently, Stare-decisis precludes ad-hoc means of arbitration, as it has no objective substance, and hence less influential as it seeks no assistance from institutions, rather formulating their own procedural and adhering to the same where parties have the discretion to skip any procedural part.

The UNCITRAL Model law does not only direct nations but also it prescribes the structural format for international arbitration institutions by reference or adoption. It is evident that the orientation and development of different arbitration institutions can be different not only because of the subject matter of the case but also due to the nature of that subject matter drives from, for instance WIPO is more inclined to resolve disputes related to intellectual property rights, hence the procedure is more confidential.

Arbitration and litigation is collaray to each other it is difficult to argue which emerged first in state of nature it is probable for arbitration changing to more structural establishment and litigation is consequence of arbitration, however in contemporary legal system arbitration is incomplete as the interim measure, appointment of arbitrator in case of conflict, challenge of award and execution or enforcement is done before the court, at seat of the arbitration.

[6] Hasit B. Seth, 'Exploring the use of UNCITRAL's Arbitration Rules and materials in Indian Ad Hoc Arbitrations(2021) SCC ONLINE <https://www.scconline.com/blog/post/2021/10/30/exploring-the-use-of-uncitrals-arbitration-rules-and-materials-in-indian-ad-hoc-arbitrations/amp/>accessed 16 March 2024

DERIVING CONTRAST BETWEEN DOMESTIC AND INTERNATIONAL ARBITRATION

To have a more constructive understanding of arbitration agreements it is essential to learn it not without all other ancillary such as contract law, and company law. Arbitration allows parties to set or rather formulate their own procedural rule but there is no reference to the substantive law of rights and liability or the matter of law that is carried out by the parties.

I. Seat of Arbitration

Domestic arbitration is determined by the Companies Act 2013 under which the companies are incorporated, which determines that the seat of administered arbitration is in India and hence the execution of the award would commence within the boundaries of Indian territories.

However, in the case of international arbitration, the seat of arbitration is not determined by where the company is incorporated but conversely by the choice of law which is not limited to incorporation but rather is extended in a third country where the contract is being performed.

II. Interim Relief

The purpose for parties to seek interim relief is to maintain status quo in form of either commission or omission for action. Every arbitration institution has their own rule which governs interline relief for example only UNCITRAL favors ex parte application for interim measure other institutions do not.[7] However national courts have discretionary power which sought to be upheld by In rem jurisdiction and parties' application in pursuant of immediate relief before the arbitrator is appointed, which is valid until the award is executed.

The contrast deriving international national or foreign arbitration is unavoidable because the scope under which a law evolves depends upon the application of law which has developed independently within different boundaries, nevertheless 'Generalia Specialibus Non Derogant' i.e. Specific law superseded general law because the application of the law would be enormous, will

[7] Sherwin, Peter J.W., and Douglas C. Rennie. "Interim Relief Under International Arbitration Rules and Guidelines: A Comparative Analysis." The American Review of International Arbitration Vol.20.(3) (2010) : 317-366.

lead to imprecision, However, the specific law would not exist if it has not been upheld by generalization and establishing the foundation of the principle at discrete level.

CONCLUSION

The understanding of this article is to draw an understanding that Ipso *facto* procedural rules are not so inconsistent with each other both at national or international level, everywhen the national arbitration is inevitably driven by local law of the land, which at international level is non-existence.

The genesis of this article is to establish a consensus in procedural rule by elaborating on the premise that overtime procedural law has acquired the quality of substance. The corpus of the subject matter or the question *Actori Incumbit Probatio,*when intune to be in constant flux the emergence of knowledge, by conflict is unavoidable. Subsequently the body of knowledge for procedural emergence, which can be elastic when with the proper argument from within the school of thought, proves later by reasoning and evidence.

Nevertheless the edifice of this article was to build on the understanding of procedural being uniform because of its substantial approach towards compilation of procedural in international arbitration involving two parties both from different jurisdiction following common law or civil law system will have to adhere, the rule prescribed by the institution or nations jurisdiction, beside the parties within the boundaries of one nation have same approach.

Thus national and international arbitration follow a consistent set of procedural rules. These rules dictate the order of interim relief, which is granted after the arbitrator is appointed. The arbitration process begins with a preliminary hearing, followed by the submission of documents by both parties, presentation of evidence in the hearing, and finally, the granting of an award. This process ensures a fair and just resolution of disputes through arbitration.